

Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114671100>

CA 20N
XC 20
- L20

Government
Publications



M-1

M-1

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Official Report of Debates (Hansard)

Wednesday 15 November 1995

Standing committee on
the Legislative Assembly

Organization

Chair: Ted Arnott
Clerk: Lisa Freedman

Assemblée législative de l'Ontario

Première session, 36^e législature

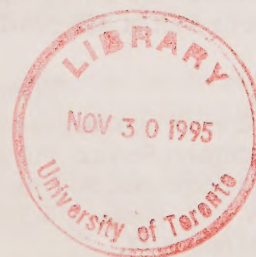
Journal des débats (Hansard)

Mercredi 15 novembre 1995

Comité permanent de
l'Assemblée législative

Organisation

Président : Ted Arnott
Greffière : Lisa Freedman



Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 15 November 1995

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 15 novembre 1995

The committee met at 1534 in room 228.

ELECTION OF CHAIR

Clerk of the Committee (Ms Lisa Freedman): Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

Mr Gilles E. Morin (Carleton East): As I look around, I just want to make a remark. I think I'm the oldest standing member on this committee. I've been on this committee since 1985, although when I look at some of my colleagues, I may be younger, but I'm very pleased to nominate a young and able candidate, Ted Arnott, who I've known for quite a few years.

Mr Tom Froese (St Catharines-Brock): I'd certainly like to second that.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare the nominations closed and Mr Arnott elected Chair.

The Chair (Mr Ted Arnott): Thank you, Mr Morin, for nominating me. I'm not sure if I was born in 1985 or not but I hope to live up to your expectations as Chair. Thank you too, Mr Froese. I thank the members of the committee for their support and look forward to working with you in the coming Parliament.

ELECTION OF VICE-CHAIR

The Chair: Our next item of business is to elect a Vice-Chair. It is my duty to call upon you to elect the Vice-Chair. Are there any nominations?

Mr R. Gary Stewart (Peterborough): I'd like to nominate John Hastings for the position of Vice-Chair.

The Chair: Are there any further nominations? There being no further nominations, I declare the nominations closed, and Mr Hastings is elected Vice-Chair.

Is there a motion to elect the subcommittee?

APPOINTMENT OF SUBCOMMITTEE

Mr Tony Silipo (Dovercourt): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Arnott as Chair, Mr O'Toole, Mr Morin and Mr Silipo; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

The Chair: Is there any discussion on the motion? Seeing none, are all members in favour of the motion? Any opposed? The motion is carried.

I'd like to turn now to the clerk, who has some information she'd like to extend to committee members at this time.

BRIEFING

Clerk of the Committee: I thought I'd spend about two minutes just explaining to this committee what it has done historically. What I've put in front of you is standing order 106, which is the terms of reference of this committee.

Essentially, this committee is empowered either on its own initiative or at the request of the Speaker or the direction of the House to report to the House its observations on the standing orders and the procedures of the House and its committees, and on the administration of the House and the provision of services to members.

Over the last few years the work of this committee has really fallen into four categories.

The first would be procedural referrals. These are referrals that generally come from the House. In the last few years the committee has looked at, for example, the role of the independent member, deferral of votes—the process that was used to defer votes—and it has also looked at referrals of conflict of interest against ministers of the crown.

The next category would be bills. Generally, the bills that this committee looks at deal with either members' expenses or the Election Act. It did in the last Parliament deal with a private member's bill by Mr Sorbara, and that had to do with elections.

It also spends time looking at members' services, and some of the issues that it has dealt with over the last few years include the TV broadcast of the House, decorum in the House, the use of computers in the House, the restoration project.

It also from time to time hears from the Speaker or the Clerk of the House and looks into broadcast on an annual basis to look at its policies.

This committee has two researchers. Lewis Yeager is from legislative research and does most of the research for the committee. Peter Sibenik is from the Clerk's office and Peter does the research that deals with procedural issues.

I'm going to turn it over to Lewis and Peter so they can give you a quick explanation of the work they do.

Mr Lewis Yeager: Thank you very much, Lisa and Mr Chair, and to committee members, welcome. I've been with this committee since 1987, so I'm second in terms of age, I suppose, and there's a bit of corporate

memory here in spite of the number of new members that we have.

I have handed out a little outline of what legislative research does for committees. Most of you, I imagine, by now will have used our services as individual members, and as committee members you can continue to do that at any time. But legislative research performs a specialized service for the committees. We report directly to the Chair and perform any type of research that the committee feels that it needs.

The one area that we don't get involved with is in terms of minority opinions or dissenting reports. This is not a committee that tends to write a lot of reports. Legislative research works directly for the committee as a whole. For any dissenting reports, the caucuses are normally responsible for preparing that themselves and giving it to the clerk. That's probably in everyone's interest. I doubt that I could write an interesting dissenting report if I tried.

The other area in which legislative research works with the committee is in recording presentations if you're having hearings and preparing a summary of the depositions that come before you. This was done in terms of the Election Act. Any time you have a hearing, we can prepare a summary of the presentations that come before you so you have that to work with during your consideration of the legislation.

The legislative researcher will draft a report for the committee. It's your report, not the researcher's, so we work entirely at your direction. In some cases you'll be seeing faces other than my own if there's a specialized topic being discussed. Procedural matters, of course, Peter will be handling through the Clerk's office. Legal matters, one of our lawyers will sit in. It could be a matter of economics or some other specialized field, in which case I would be replaced or assisted by one of our other people.

That's really all I have to say. There's a little summary of what we do. There's a brief blurb on me included in that so you can get to know me a bit. Unless you have any questions, I'd like to pass it on to Peter.

1540

Mr Peter Sibenik: Thank you, Lewis. My name is Peter Sibenik, and I'm the procedural clerk, research. I work out of the committees branch. I am typically engaged in the writing of Speaker's rulings, maintaining of the parliamentary precedents and rendering procedural advice, typically to table officers and to my colleagues within the committees branch.

However, from time to time there are procedural issues that arise in this committee—I think Lisa mentioned a few of them: independent members, conflict of interest, deferred votes, and there have been a number of others—and the committee wants to hear the benefit of my procedural expertise. It's on those occasions that I will be called before this particular committee. I'm not a regular member. You won't see me up here at the front on a very regular basis except on those occasions when you do want to hear from me on a procedural matter that requires some fairly intensive procedural research. I'll be happy to serve the committee in that capacity.

COMMITTEE BUSINESS

The Chair: The next item on our agenda is "Other Business." I'd like to raise the issue of security. As all members know, it has been discussed in the Legislature that this committee should be reviewing the issue of security in this building. In light of the events on the day of the throne speech, it has also been suggested that the committee should be inquiring into what happened on that day, why it happened and what we should be doing in the future to ensure that there is suitable security in this building.

It's my suggestion to the committee that next week we invite the Speaker of the Legislature to come to our committee and extend to us his advice and suggestions, bringing along whatever staff of the Legislature he may feel is appropriate to initiate our review of the security issue. Is there any discussion on that idea at this time?

Mr Silipo: I certainly would agree with your suggestion. I also think it would be useful—and I don't know if you intended this and you suggested other people as well—I think one of the recurring issues that I know many members of the House had, certainly I would have, is to get a better understanding of what actually happened.

I would hope that under the Speaker's direction and your work with him we could ensure that the people who come before the committee are those who are able to give us a sense of what happened so that we can learn from what happened and deal, then, with whatever recommendations and advice we may want to make, but based on those experiences about who made what decisions etc about what actually took place on the day of the throne speech and subsequently.

Mr John O'Toole (Durham East): Just following up on Mr Silipo's comment, to boil it down specifically, who is the single point of contact? Who is the person that gives the order from the Legislature to the security forces? That's what I want to know. Who's communicating the request for bulletproof vests and that kind of attendance at proceedings here at the Legislature? I think there must be someone who's empowered. You can't have 19 people calling the director of security. Who is the person, and how do they get that communication?

The Chair: That's a question that you might want to pose next week.

Mr O'Toole: No, that's what you should be prepared next week for them to answer that question.

The Chair: The Speaker ultimately is responsible for the workings of the Legislature, as I understand it.

Mr O'Toole: He doesn't phone.

The Chair: The Sergeant at Arms is responsible for the security. That's my understanding.

Mr O'Toole: The Sergeant at Arms. So that's the answer? It's Tom that phones and says, "We need tanks and police cars," or whatever it is? I'd like to know who that is and under what authority too. It sends a signal.

The Chair: Again, that's probably a good question for next week.

Mr Bill Grimmitt (Muskoka-Georgian Bay): I'd like to echo the concerns raised by both Mr Silipo and Mr O'Toole. I myself have been jostled twice on the way to regular House duty. I wonder if Mr Stelling should be at that meeting as well, because we've already seen that the Speaker doesn't have a lot of information to provide about the main day in question. So my suggestion would be, let's have the people here that can answer the questions about that day in particular.

The Chair: I'm certain that we could invite Mr Stelling as well. If there's concurrence in the committee that we do so, that's certainly something we can do.

The Clerk has raised a good point. Would the committee care to advise the Chair as to its feelings as to whether or not the meeting should be closed or open?

Mr O'Toole: I think the meeting should be open. That's the whole point. I think everyone has the right to know what the protocol is and go forth and try to calm the concerns.

The Chair: There might be some concerns from the staff about that, but we could certainly endeavour to have an open meeting.

Mr O'Toole: It's only my opinion.

Mr Morin: I think it's an excellent idea to have everything open. I agree with you. But as to certain things that happen as far as security is concerned, I think that the public should not be aware. Let me qualify this. There are threats in this House every day, and of course you don't want to frighten people, but it's a suggestion that I make to leave it to the discretion of the Sergeant at Arms or the Speaker, if they so wish, when there are certain items that should be discussed in camera. That's just a suggestion that I make.

We've gone through this, we've had committees, we visited the Parliament in Ottawa, we visited the Parliament in Quebec City, and then there are all kinds of reports that are available that perhaps you should read just for your own information so that you get a feel for it. I strongly suggest that you read them because you'll find that security evolves with society. There's no question about it. What we are doing today we would have never thought of doing 20 years ago.

This is why I think for your own information, try to read those documents, and then leave it up to the discretion of the Speaker or the Sergeant at Arms and they'll ask that permission if there are certain things that occur in the House.

Mr Froese: I'd like to suggest one step further, that it be a closed meeting. I agree that there's some discretion as to whether it should be open or closed and both points are valid. However, if you're going to say that an open or closed meeting will determine what information you really get, I believe our committee should determine whether it's open or closed and make a decision, rather than going to the Sergeant at Arms or the Speaker, because it will determine how they approach and what information they give based on whether it's open or closed. I strongly support its being a closed meeting when we talk specifically about what happened on a specific date and who was in charge.

Mr Rick Bartolucci (Sudbury): I disagree, and I agree with John O'Toole. I believe the meeting should be open, but I think we should heed the advice of our senior member and move in camera or into closed session at the request of the Sergeant at Arms or any other individual who may, when testifying, request that. But I believe it's very, very important that we send out the signal that this is an open committee, and we have no problem moving in and out of camera at someone's request.

Mr Silipo: My sense, or perhaps my hope, is that in fact this is something that can be worked out between the Chair and the Speaker and/or the Sergeant at Arms. I think that, from my perspective, certainly from what I'm hearing, there are a number of issues around the process that I think have to be dealt with in public, about what happened and particularly when we talk about what we'd like to see happen in the future and not happen in the future.

But there may be within that discussion the need for us to be made aware of certain information—if there is, I don't know—about things that perhaps ought to be addressed in private, and I'm prepared to keep an open mind on that. I would lean more to the premise that, unless necessary for good security reasons, the discussions ought to, to the extent possible, take place in public.

The Chair: I see a lot of heads nodding. Is there concurrence, generally speaking, with that sentiment? The clerk would instruct that in the letter that we will send to the Speaker tomorrow.

Is there any other business before this committee that members would like to raise?

Mr Stewart: This may not be the committee that does this, but with the fact that we're having the Speaker at the next committee meeting, I would like very much to get this committee to look at procedures, protocol, conduct etc in the House.

I have never in my life been involved with anything with less control, more arrogance, and I could go on with all these magic words. It is absolutely terrible. When I start getting letters from people in my riding talking about our conduct—and I said "our" conduct—then I think that we should be looking at it.

As an ex-municipal politician, if this kind of conduct had been carried on in my county council, they'd have been asked to leave and not allowed to come back. I truly believe that if we are to represent the people of our ridings and in this province, we'd better act accordingly. I would ask that if this be the committee we do that, we look into that and have a discussion with the Speaker on it.

The Chair: As Chair maybe I'm not supposed to be entering into this discussion, but I agree wholeheartedly with your statement.

Mr Stewart: I would ask that that be put on the agenda for the next meeting, if that's how it goes.

The Chair: There will be a subcommittee meeting early next week to discuss additional issues that we're going to be wanting to deal with over the next little while, so that statement will be noted.

Mr Stewart: I would ask that it be included if possible.

The Chair: Yes. Mr Hastings, do you have a statement?

Mr John Hastings (Etobicoke-Rexdale): One of the things I hope this committee will look at after we get through the security and protocol concerns would relate to the overall operation of the assembly and the environs of the building.

One of my major concerns, things that we should be looking at, is the computerization or wired world that most legislatures have started down, and aside from probably a couple of studies that may have been done, how far behind we are in that whole area. That's one of the minor facets. But the operations of the whole parliamentary precinct I think require effective scrutiny.

The Chair: The clerk's taken note of that.

Mr Hastings: Food, restaurants, all those things. I know the Speaker's going to be bringing some stuff to us, but services to members is what I'm extremely concerned about.

The Chair: It is the mandate of our committee to do that, and thank you for your suggestion. Mr DeFaria.

Mr Carl DeFaria (Mississauga East): Also following on what Mr Hastings has indicated, to look into the role of supply and services and their role and function and how they function in providing services to the members.

The Chair: Is there any further business that members want to bring to the attention of the committee at this time? Seeing none, this committee stands adjourned until next week, Wednesday, November 22, at 3:30 pm.

The committee adjourned at 1553.

CONTENTS

Wednesday 15 November 1995

Election of Chair	M-1
Election of Vice-Chair	M-1
Appointment of subcommittee	M-1
Briefing	M-1
Committee business	M-2

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

- ***Chair / Président:** Arnott, Ted (Wellington PC)
- ***Vice-Chair / Vice-Président:** Hastings, John (Etobicoke-Rexdale PC)
- *Bartolucci, Rick (Sudbury L)
- *Boushy, Dave (Sarnia PC)
Cooke, David S. (Windsor-Riverside ND)
- *DeFaria, Carl (Mississauga East / -Est PC)
- *Froese, Tom (St Catharines-Brock PC)
- *Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
Johnson, Ron (Brantford PC)
- *Miclash, Frank (Kenora L)
- *Morin, Gilles E. (Carleton East / -Est L)
- *O'Toole, John R. (Durham East / -Est PC)
- *Silipo, Tony (Dovercourt ND)
- *Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Clerk / Greffière: Freedman, Lisa

Staff / Personnel:

Yeager, Lewis, research officer, Legislative Research Service
Sibenik, Peter, procedural research clerk, office of the Clerk

A20N
XC20
-L20

Publications



M-2

M-2

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 13 December 1995

Journal des débats (Hansard)

Mercredi 13 décembre 1995

Standing committee on the Legislative Assembly

Committee business

Comité permanent de l'Assemblée législative

Travaux du comité



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 13 December 1995

Mercredi 13 décembre 1995

The committee met at 1544 in room 228.

ASSIGNMENT OF MINISTRIES

The Chair (Mr Ted Arnott): I call this meeting to order. Members have in front of them a copy of our agenda. The first item that we have to deal with today is the assignment of ministries pursuant to standing order 108(b). I think it's fairly straightforward, but we require a motion from the floor to reflect the changes in the structure of the government so that those ministries can be assigned to the various standing committees of the Legislature. Is there any member of the committee who would like to move the motion to reflect that change?

Mr Rick Bartolucci (Sudbury): I so move.

The Chair: Any discussion to the motion? All in favour? Opposed? Carried.

USE OF CHAMBER

The Chair: Secondly, we have a request from students from Wilfrid Laurier University to use the parliamentary chamber for a model Parliament. This was referred to us by the Speaker, as to whether or not we should perhaps have a policy as a committee to make recommendations as to who should and who should not be allowed to use the chamber. I think in the past Upper Canada College has operated a model Parliament involving people from across the province, and that has been the only group that has been allowed to use the chamber for that purpose, for a model Parliament. I'm in the hands of the committee as to how you would want to deal with this. I just open the floor for comments and suggestions as to what would be appropriate.

Mr Gilles E. Morin (Carleton East): I think that we should consider each application as it comes and that we should not hesitate at all to grant them authorization to use the House. What is the procedure? Do we have security? Do we have people keeping an eye on the whole thing? Is that the way we do it?

Clerk Pro Tem (Ms Donna Bryce): I'm not familiar with the actual operations of it once it's approved. I am familiar with the House leaders' agreement in the past, I believe 1994, that permission would be granted only to Upper Canada College's Ontario model Parliament. So in terms of the operations of it, I'm not familiar with that. We can find out. I think that if the committee were to develop a policy, we would want to have future meeting dates to discuss it and perhaps at that time more information can be brought forward.

The Chair: In the past it's been the House leaders who have made this decision. What they're looking for, I guess, is our involvement in these decisions.

Mr Morin: I think we should all of us think of future recruits to replace us. It's important that they know how to operate in our House. I think it's a wonderful experience.

Mr Bartolucci: I certainly concur with my fellow member with regard to this. I believe we should look at every application, deal with every application individually, and certainly we should never, ever discourage our future leaders from using the facility which governs this province. So I would be in support of this application and I indeed think it would be a good idea that we as a committee sit down at some date to discuss what type of policy we are going to develop, always encouraging and never discouraging our future leaders.

Mr Tony Silipo (Dovercourt): I would just simply say that I think the use of the Parliament by groups such as this should be applauded. I think in the absence of a policy, we should approve this request. The idea of developing a policy is also a good one. In the absence of that, this sounds to me like it's a worthwhile initiative that should be supported.

Mr Bill Grimmett (Muskoka-Georgian Bay): Myself, I don't understand why it would have been limited to one particular school in the past, and particularly Upper Canada College, which is a private school. So I certainly agree with the members opposite.

The Chair: I gather that it was Upper Canada College that organized it, involving students from across the province. But I'm not sure of the rationale for the previous policy beyond that. I suppose there was some consideration given to the fact that if it was wide open we'd be inundated with requests and it would become difficult. The other issue, I suppose, is perhaps also the tourists who come in here in the intersession, particularly in the summertime, that we should give consideration to that.

Do we require a motion?

Clerk Pro Tem: Not if everybody's in agreement.

The Chair: Do we have general consensus that we allow students from Wilfrid Laurier University to come on the terms that they've—have they given us a specific date that they're looking for?

Clerk Pro Tem: March 9 or 16.

The Chair: Then is it the consensus of the committee that the subcommittee would deal with individual applications as they come in or would we require a full meeting of the committee to discuss every individual application? Would you want to empower the Chair or should we

discuss it further and come up with a policy at a later date?

Mr Silipo: I don't know that we're going to be deluged with applications, but in the event that there might be additional applications that come, and if it proves, in terms of the time lines, difficult for the committee to have to deal with them, I certainly would be quite happy if we authorized you, as Chair, if need be in consultation, even through the clerks by telephone, with members of the subcommittee, to be authorized to approve those requests. That would be fine.

1550

I think what we're seeing today reflected here in the comments made so far is a spirit of people saying we think the chamber should be available for initiatives like this. Again, if there are additional requests, I wouldn't expect that there'd be too many and I'm sure that they can be accommodated within the spirit of what we're passing here today.

The Chair: Again, assuming that there are students who are interested.

Mr O'Toole, did you have a question?

Mr John O'Toole (Durham East): I gather we're discussing the order here that is the Wilfrid Laurier request? Pardon me for being late. Have we, in this discussion, put any restrictions on—you mentioned the word "students." Does that imply elementary school?

The Chair: There was general consensus that we want to encourage students to take an interest in Parliament and parliamentary democracy, and that this request should be granted and that others in the future be given favourable consideration, assuming they're coming in under similar circumstances.

Mr O'Toole: My only sense is that it is, first of all, kind of a privilege type of thing. It is a very historic place and all that kind of thing, but I'd be very happy, without putting restrictions on it initially, to try it at the university level. Model Parliament starts, I guess, in grades 7 and 8, and United Nations activities are encouraged in elementary schools as well. So my sense is that it would be appropriate, for the first time, to do it at the university level. The next opportunity might be at the high school level. High schools have model Parliaments and United Nations forums. I'm just questioning it. I wouldn't like to put it so loose that it would be eligible to any group that could call themselves students.

The Chair: Perhaps we could have the subcommittee look at some of these additional issues in consultation with staff on the understanding that we generally support the concept, certainly of university students who are expressing an interest, to accommodate them as best we can and that we will extend the approval to the Wilfrid Laurier University group and they'll be in.

Mr Grimmett: Could I ask if we're going to set up some rules regarding this?

The Chair: I think that the subcommittee could work through some of those issues. There'll probably be some criteria that would be appropriate to attach. We just received the request this morning, so we'll have some more time to think about it.

COMMITTEE BUSINESS

The Chair: We're at other business. Are there any members of the committee who would like to bring forward other business for the committee's attention?

Mr Silipo: Are we dealing with item 3?

The Chair: I'm sorry; request for meeting time. We have a letter from the Speaker that the Chair received today, and I think all members of the committee have a copy of it. As I understand it, essentially the Speaker regrets that he can't be here with us today to discuss the issue of security. As you know, he's been scheduled to be here on several consecutive Wednesdays and circumstances in the House were such that he was unable to attend. Today, I understand the Board of Internal Economy is meeting and the Speaker has to be there.

What he's suggesting is that in the intersession the subcommittee of this committee should travel to Ottawa and Quebec City to study the security arrangements in the House of Commons and the National Assembly. I guess we'd like to have a discussion at this point, if committee members support that concept. We would have to go to the House leaders in turn, as I understand it, to request time to have any sessions as a committee. That's something that would still have to receive approval, to go outside of the province, which is an additional factor that has to be approved, again, by the House leaders, as I understand it.

Is there any discussion with respect to the Speaker's letter?

Mr Silipo: I would say that I think this is a useful suggestion that's made by the Speaker. Let me just back up a bit and say that I think that the issue of security, which we had agreed as a committee that we wanted to discuss and, as you mentioned, for a variety of reasons have not been able to begin that discussion here at the committee, is something that I for one would want to see us pursue in the intersession, so I think that we should make the request to the House leaders for time for the committee to be able to deal with that issue.

I would want to see, as part of that, all of the things happen that we had in fact asked happen, including the Speaker and the Sergeant at Arms and other appropriate officials coming before the committee and discussing the events of the opening day of the Legislature and subsequent days, so we get that kind of information before us.

I think that what the Speaker is suggesting here is something that would be useful in terms of also getting a sense of what security provisions are like in Ottawa and Quebec City. If going there is the best way to get that information, then I think that would make some sense. If there are other ways to get that information, then I would support that as well. But again, maybe that is something also that can be worked out in terms of its details at the subcommittee level, assuming of course that the House leaders were to agree that this would be something that would be useful. I think that as a way of getting a better understanding of what should be done it might be useful, but I just wanted to also make sure that we not lose track of the approach that we had agreed we would follow earlier, which was that we would have various officials

come before the committee and that we would start by looking at what happened as a way to then launch our discussion into what changes, if any, should take place around the security provisions.

Mr O'Toole: I completely concur. Whether or not the Speaker's recommendation here is the proper route, I suspect the subcommittee should do a thorough review, and it may indeed include that in terms of the security issue. It seems like we've met, this is the second formal time, and I think the subcommittee has met once, and we seem to be spinning our wheels here. By the time we get back here, it will be March.

It would appear to me that it's a priority issue. It would set the tone in respect of other events happening in the Legislature—I may have something more to say on that later—but yes, I would suggest that we develop a background for all members of the committee and some reference points from firsthand observations. This may be the appropriate action. I default to other members' comments.

Mr Frank Miclash (Kenora): I too concur with the aspect that's been given to us here in terms of having the subcommittee go and take a look at both the Quebec Legislature and what happens in Ottawa as well. I think that's important in terms of our discussions here in this committee, but I also have to reiterate the comments made by Mr Silipo. The fact is that we are truly looking forward to having appear before the committee the people whom we've suggested in the past, being the Speaker and the Sergeant at Arms. I do hope that does not get lost in terms of our investigation and further discussion. I too look forward to those appearances.

Mr John Hastings (Etobicoke-Rexdale): I think we should get our priorities right and I think we should, first off, as a committee look at what occurred here in terms of the security issue before we head out anywhere looking at what they are doing or not doing. I think we should clearly identify what the problems are or aren't before we head to Quebec City or Ottawa, or any place else, instead of the other way around.

The Chair: I guess the Speaker's thinking was that if we could look at the security arrangements in Ottawa and Quebec City, we'd have some understanding of security arrangements here just based on our day-to-day activities, and give recommendations on that basis.

Mr Miclash: I really don't think that the order is important here. I think we're in agreement that both items have to be taken care of. We have items of appearances on the agenda and we have a second item here of visits to other jurisdictions to find out what they're doing. I think both of them have to occur. The order of occurrence to me is not important as long as both of them do occur.

1600

Mr Grimmett: I want to concur with Mr Silipo. I guess I haven't been following the agenda very closely; I thought there would be witnesses here today. Do you have any time frame on when we can expect to see some witnesses before this committee? Because I think we have to determine what happened around the time of the throne

speech before we embark. I disagree with Mr Miclash in that I think the order is important; I think we have to determine what happened here. Just from walking around here, I don't think it's possible for someone to know what the security arrangements are; I certainly don't know what the security arrangements are. As I said before, I've been jostled coming into the House myself. I want to know why and I want to know what happened, and I want to know also just what rights the public have around here.

Mr Bartolucci: Getting back to our original discussion, I concur with the honourable member across the way. Before we go to Ottawa and before we go to Quebec City, have we investigated whether or not people have already done that and whether or not we have reports on file? It's my understanding that people have already visited these two sites, and I think if we did a little research, we could probably find some reports here which may make it a lot easier for us to come to some type of consensus without travelling.

But certainly the problem here is what's happened here in the past, and that must be dealt with first. I would suggest that while we're doing that we try to get reports. I don't know if I'm right or not, but I heard that Tom Stelling already has reports on file with regard to the security in Quebec and the security in Ottawa. We might want to investigate our own staff and our own expertise before we decide to go out and travel.

The Chair: I think Tom, as well as our clerk, is quite knowledgeable about many of the security arrangements in other parliaments.

Mr Morin: At the risk of repeating what has been said, I think one good suggestion would be for Tom Stelling to give us a tour of security, what do we have as far as security here at Queen's Park is concerned, so that at least you have a feel for it. What are the things that are extremely important as far as visitors are concerned, all the apparatus that we have to make sure that people don't bring in weapons? Because when you visit Quebec or Ottawa, you'll see that their system is far more elaborate than what we have. Yes, we do have on record information about our tours that we did in Quebec and that we did in Ottawa.

Secondly, once we're familiarized with what we have here at Queen's Park, then after that ask Tom what are the things that you'd like to see or what are the weaknesses in our system, so that at least again you can see and you can compare it with other places. Once you have that, then also: What are the concerns of the Speaker? How did we solve the issues dealing with people who were denied entrance at Queen's Park to the throne speech? Once you have all that information, look at the report that we have and then go and make your tour so that you can compare. The idea is to get the best. You know your strengths, you know your weaknesses, you know their strengths and their weaknesses, and we bring the best package that we can have here for Ontario.

Mr Ron Johnson (Brantford): I want to concur with Mr Morin. I think, first of all, we have to get a good understanding of exactly what it is that's going on here in terms of security. As a new member, I don't have a

clue what the security arrangements are for this Legislative Assembly. So I think a tour is a tremendous idea; I think getting some sort of briefing or report from the security here would be a wonderful idea.

At the same time, I'm not particularly interested in reinventing the wheel either, and looking at what Ottawa is doing and looking at what's happening in Quebec City, if Mr Morin is right that they are operated much differently than we are, I think we could stand to learn a great deal by visiting those sites. But first, again, I agree with Mr Morin that we have to determine what it is that's going on here and get a good understanding. That way we have something to compare it to when we do see the other sites.

Mr Dave Boushy (Sarnia): Just a question: There has been a tour taken before to Ottawa. Am I correct on this?

Mr Morin: Yes.

Mr Boushy: They made a report on it?

Mr Morin: There should be a report. Tom has that, and there must be some documents somewhere.

Mr Boushy: I think that's what we should do: Take a look at the report, find out where we stand and then make a decision.

The Chair: Would the committee authorize, then, the Chair to write a letter to the Sergeant at Arms, perhaps copying the Speaker, requesting that we have this time to have a tour? We've certainly got to get our approval first from the House leaders in order to sit. I think there's consensus in the committee that we should request some time in the intersession to discuss the security issue further. Perhaps we should have the subcommittee meet to refine the details. Would the committee members think one week could be appropriate to discuss security, or is there a feeling that we'd have to go beyond that?

Mr Micalash: One week here?

Mr Morin: I think you could do it in a couple of days, two or three days.

May I suggest also that one of the responsibilities of this committee in the past was to look at the refurbishing of the building. If I could make a suggestion, for the new ones, that we're also given the opportunity, with the Sergeant at Arms, to visit all the floors, there are a lot of historical parts of this building that you'll never see if you don't take the time to do it, like on the fifth floor. What does the structure look like? Those are extremely important things, and Tom will give us a tour. I took the tour only after eight years, and I was quite proud of this building and all the history attached to it. It's a good experience for all of us. You'll have a good feeling of the building.

The Chair: Any other comments on this issue? Do we have a motion from the floor to authorize the Chair to write a letter?

Mr O'Toole: I move that the Chair convene the subcommittee to outline a strategy to examine the security of the building for the committee and to make recommendations for us—including the Sergeant at Arms and the Speaker, of course—so that we can sit in the interval period.

The Chair: Okay, we've got the motion to authorize the Chair to request that, and the subcommittee would be empowered to meet to discuss the details as to what we'd do with the week that we're seeking. All in favour of that motion? Any opposed? Carried.

Other business?

Mr Morin: I move that for the purpose of the committee business over the winter recess the Chair and the clerk, in consultation with the subcommittee, shall have the authority to make all arrangements necessary for the orderly consideration of all matters referred to the committee.

The Chair: Any discussion on the motion?

Mr O'Toole: That's basically a kind of blanket motion? Anything that's before us, they set up some ability to deal with it?

Mr Morin: Right.

The Chair: No further discussion? All in favour of the motion? It's carried.

The clerk has asked a valid question. Do committee members have a preference as to which week they would prefer to sit, assuming that the House leaders do give us the authorization?

Mr Micalash: Being from as far away as I am, I would suggest that maybe the week around the day that we have to come back, January 29, which is a Monday. Possibly that week would be nice.

The Chair: All right. Is there consensus around that point? Good.

Do committee members have any other business they would like to bring to the attention of the committee?

Mr O'Toole: Yes, if I could, Chair; I'm just not too sure. I've listened to this debate here on this security issue. As a new member, I must qualify when I say perhaps my comments may be a little out of order, but I have written them down to give some consideration to it.

I've been concerned about not only security but the antics—in the broader term it's called security, but I call it behaviour—both inside and outside the assembly. I believe I can speak for many members whom I've mentioned this to. There seems to be a kind of degeneration or a disregard, disrespect for our standing orders, as displayed in the Legislature last week. They can't go unchallenged or unquestioned, in my view. I mean this sincerely and for the right motives. The purpose of this committee is to re-establish confidence in the standing orders and the ability of the Speaker and the Sergeant at Arms to carry out the process.

1610

It's an insult basically to us—not just new members, but the people of Ontario. I'm not trying to point out any individual. I think it's time to re-examine, and in the context of what we're doing with the Speaker, examining security and other procedural requirements in this House, I have a motion, with your indulgence.

I move that the standing committee on the Legislative Assembly be authorized to review and report on the issue of decorum in the Legislature as well as the disciplinary powers of the Speaker. An examination of these processes

both in Ontario and in other legislative precincts will be necessary.

Furthermore, as the standing committee on the Legislative Assembly is currently reviewing other security and related issues, it may be appropriate to include this concern at the same time—because we'll be dealing with many of the same people.

This review by the standing committee on the Legislative Assembly will be authorized to examine, among other things:

The authority of the Speaker to name members; use of force by the Sergeant at Arms to eject members who have contravened the standing orders, been named by the Speaker, refused to obey the Speaker and refused to leave.

Also, the current standing orders which compel members present in the Legislature to vote (for or against). This also applies to votes during a division or any other vote as called by the Speaker.

The committee will examine other relevant standing orders: points of privilege and points of order.

In other cases we will consider other jurisdictions.

Furthermore, I move a motion that the standing committee on the Legislative Assembly be authorized to meet as a committee during the intersession.

I think it's that important to react responsibly and quickly to the statements by members and the press and people watching the parliamentary channel in this province. I know I speak for other members, that this has to be checked immediately and quickly. I, for one, am not going to sit by and watch democracy completely destroyed and defaced.

The Chair: Thank you, Mr O'Toole. Can we get a copy of the motion for the members of the opposition parties?

Mr O'Toole: Sorry; it's handwritten, so it's a little jaggedy. I hope you'll be able to read it.

Mr Silipo: Mr Chair, before I get into the merits of the motion, could I just ask you to rule procedurally? This seems to me to be a pretty substantive issue that Mr O'Toole is raising and I'm really concerned about the appropriateness of it being raised as a matter of other business. I have a lot to say on the content of it and what we should do as a committee with this issue, but before I even get into that I really do have a serious reservation about this kind of issue being flagged as a matter of other business.

The Chair: On what basis would you ask me to rule it out of order?

Mr Silipo: I would just think that at the very least, if Mr O'Toole is interested in having a discussion of this item and decisions taken by this committee, it seems to me, given the significance of the issue that he's raising, that it would be more appropriate for that to have been flagged to us. I mean, the procedure that we follow, as I understand it, is that items to be discussed in the committee are determined and arrived at in agreement through the subcommittee, and this hasn't happened in this case with this particular issue.

If I could just go a little bit beyond that, I would also say—and I don't know if Mr O'Toole is aware of it, because I don't for a second question his belief in what he's put before us, but you may be aware, Mr Chair, that the very issues that Mr O'Toole has raised in this motion have been the subject of discussions by the three House leaders. There was, as I understand it, a specific request in those discussions by, I believe, the government House leader for that very issue to be discussed by this committee, and there was not agreement reached on that because the long-standing practice has been that any discussion related to changes in the standing orders and related matters are dealt with through the House leaders and not through this committee.

For that reason as well, Mr Chair, I would say that the motion is, if not out of order, at least not appropriately before us at this point.

The Chair: I'll reserve my ruling until I hear further discussion.

Mr Miclash: Mr Chair, I would certainly have to agree with Mr Silipo. As he has heard, and as deputy House leader for our party, I know these discussions are going on among the House leaders. I strongly agree with Mr Silipo that this is certainly out of order, and prior notice as well would have probably settled this before we came to the committee room.

Mr Ron Johnson: I quite frankly want to speak in support of Mr O'Toole's motion in that I don't—

The Chair: We're technically, I think, at points of order, are we not? But continue if you have a comment to make.

Mr Ron Johnson: I do have a comment to make, if that's okay. I don't know that there's any more timely point in time when we can deal with this issue. If the Legislative Assembly committee isn't here to discuss the standing orders and discuss the role of the Legislature and the role of the Speaker in terms of the standing orders, then what are we here for? I think this is a crucial issue, one that, as has been said, has been discussed by all three House leaders, and we recognize that as well, but at the same time I believe this legislative committee has an obligation to this assembly to deal with this matter as well.

At the end of the day, I think that what Mr O'Toole is putting forward makes a lot of sense. It's important that we deal with it. We're not at this point, or I'm not anyway at this point discussing any particular issue with any specifics, but I think that in general terms this certainly needs to be looked at, and this is an appropriate time to do that.

Mr Carl DeFaria (Mississauga East): I thought one of the main functions of this committee is to deal with the standing orders. For myself, I see no point in being in the committee when that kind of motion could not be put forward and all the decisions are delegated to the subcommittee. I read the standing orders, and I see nothing in the standing orders that says members of this committee have to wait for the subcommittee to put anything on the table.

Mr Hastings: I think this is a pretty vital issue. I can see Mr Silipo's viewpoint as to whether it's appropriate

at this time, and in that context then I think this item ought to be referred to the subcommittee to look at. We furthermore need to find out what would be the terms of reference, if not written in stone, at least what are the parameters of the issues this subcommittee's supposed to deal with, and whether is this a good example of one of these items that the subcommittee could deal with.

Secondly, I'd like you, Mr Chairman, to find out where exactly there is any exclusivity as to whether this committee could not handle decorum in the House and why this committee would be prohibited from dealing with the issue, even if the House leaders are dealing with the item. In other words, would the House leaders' discussion of this item and its related side issues prohibit this committee from dealing with it, or the subcommittee, and if so, I'd like to see where in writing it would, or is it more an informal arrangement?

The Chair: I have quite a number of speakers on the list to go. Mr Grimmatt? This is a point of order, remember, if you're speaking about the merits of the—

Mr Grimmatt: The only thing I would say, Mr Chair, is that perhaps we should review the standing order with respect to this committee's mandate, and I think it's quite clear.

The "standing committee on the Legislative Assembly...its empowered to review on its own initiative...its observations, opinions and recommendations on the standing orders of the House and the procedures in the House and its committees."

I would find it very strange if we weren't allowed to carry out that mandate, and if we aren't, then I really think I'm wasting my time.

The Chair: Mr Froese, you wanted to make a comment as well?

Mr Tom Froese (St Catharines-Brock): Yes. In speaking directly to the motion—

The Chair: No, we're on a point to order.

Mr Froese: I'm sorry. With respect to democracy, you asked for other business, and I believe that anybody on this committee should be able to bring up, when you ask for other business, whatever they want to, regardless if it goes to the subcommittee. I think we should have that right.

As far as what Mr O'Toole has brought forward, I think it could be discussed here and voted on and doesn't have to go to subcommittee.

1620

The Chair: Mr Froese, thank you very much. I've been advised that there's nothing—did you have some further comment on that point of order?

Mr Silipo: I would just add, Mr Chair, that I believe that this is a pretty significant issue that's being raised, both procedurally and substantively, and I want to be clear with people that I'm not saying that I am against us having a look at the standing orders, because I think Mr Grimmatt is right in saying that there's latitude for us to do that.

But I want to just reiterate one of the points I made, which is that we also, I think, as a committee of the Legislature, have to be conscious of a couple of things,

one of those being the processes that have been followed and that are followed that make the Parliament of Ontario work, which are that arrangements around how issues are to be discussed and what issues are to be dealt with, especially of this kind of nature, are and have been traditionally the subject of arrangements reached through the House leaders. I think that we should tread lightly before we do away with that process.

Secondly, Mr Chair, I think it would behoove you, before you come to a—certainly I would say that, given the significance of the issue that's been put before us, I find it disturbing that an issue of this magnitude would be raised here under other business when the agenda clearly set out the purpose of this meeting and the purpose of this meeting did not include the committee dealing with anything remotely similar to this kind of an issue. I think on that point alone, Mr Chair, you should rule this out of order.

But because I don't want to be seen to be suggesting that the issue itself is not significant—because I believe the issue is quite significant, and I have not yet said anything on the substance of it; I have a lot to say on the substance, but I'm refraining from doing that—I would think, Mr Chair, that as a minimum, if you're not prepared to rule this out of order at this point, which I hope you are, but in case you are not or if you had any doubt about that, you might want to consult with the Speaker and, I would suggest, even the House leaders before we proceed to do anything more on this motion.

I think that would not in any way jeopardize Mr O'Toole from bringing this motion forward at any other time, because in fact for us to do anything with this, it would require us being allowed to sit as a committee. Right now we have no authority to sit beyond today, assuming that the House adjourns tomorrow.

Mr Ron Johnson: On the same point of order, and with all respect to Mr Silipo, and I understand his position, at the same time, on one hand he's saying—not to enter into debate, but he's saying that it's an important issue that should be dealt with, and quite frankly I believe it should be dealt with now. If it's an important issue, let's deal with it and let's get it on the table and start looking at it as a committee.

With respect to what Mr Silipo says in terms of the House leaders, what is happening between the House leaders should not in any way affect the autonomy of this legislative committee. This legislative committee is here to deal with issues of this type. We have a responsibility, I believe, to this Legislature to do that, despite what's happening at the House leader level. So I quite frankly don't buy that argument. I think it's a very important issue, and I honestly believe that it should be dealt with right away.

Mr O'Toole: The point of order is very important. I've heard Mr Silipo's comments on the substantive nature. That is a term that's used to require notice of motion or whatever kinds of procedural rules. But really, if you look at the standing orders on page 77—and I want to tell you very honestly that I'm acting on my own motivation here. I am purely disgusted. Since 1980 I've been elected and I've served in many capacities as chair

and vice-chair of committees and at provincial levels. When you see such a complete breakdown—and I've never seen that before. At local councils, where there's lots of slinging going on, I've never seen a House held for ransom. I will not put up with it, and it's the—

Mr Silipo: On a point of privilege, Mr Chair.

Mr O'Toole: I am trying to address what has been said.

Mr Silipo: There are people on this side of the table who feel equally strongly about who's holding the House up for ransom. I've tried very hard in dealing with this to stay away from my views on the substance of the issue—

Mr O'Toole: Okay, I will not deal with the substance.

Mr Silipo: —and I think it would behoove Mr O'Toole to do the same.

Mr O'Toole: As far as being substantive, if you read the standing orders, we are more than clearly—it's the standing order on the Legislative Assembly committee, "which is empowered to review on its own initiative." That says it all.

This is the initiative. I'm going to request that this be business that this House has sufficient time to deal with in the downtime over the break. If there are substantive portions or components of the debate that will ensue, this committee will bring a report forward, whether it supports my attitude—the majority, I hope, of this committee—and we'll be able to call on the Sergeant at Arms and the Speaker. And we're to report to the Speaker. That's what it says right in here: To report to the Speaker and the House on those things relevant to—and obviously, that's what the Speaker's ruling did say to me. He said he had a tough time.

Just one final point on this: I believe it's far more substantive than that. I think if you look at the traditions in the House, the Sergeant of Arms has a sword, going back to the old days of the British traditions, and the mace, which was again a weapon, a truncheon of some sort.

I'm suggesting that those symbolic things imply the use of force, whether it's external to the building, which is one part of what we're reviewing over the downtime—that is the force outside the building—and I'm talking about the force inside. I don't think it's particularly my thing whether it is good or bad to use force, but in that respect they are related. That even more so reinforces the fact that they should be dealt with conjointly, so I'm going to stick to it that we're going to have to deal with this on the downtime, the sooner the better.

The Chair: Mr Silipo, do you have—

Mr Silipo: No, Mr Chair, I wish you would then rule on this.

The Chair: I will, after all members have had an opportunity to speak to this point of order.

Mr Mielash: Mr Chair, just on a procedural question, does the business to this committee not have to come either through the Speaker or through the House and be passed on to the committee for review? Is that not my understanding?

The Chair: I believe that the standing committee on the Legislative Assembly has the right to initiate matters

broadly speaking within its mandate, and I believe that matters affecting decorum in the Legislature would fall under the mandate of this committee. Furthermore, I'm advised that there is nothing in the standing orders which suggests that a motion of this nature is out of order, and I rule that it is in order. Now we should have further discussion, if necessary, on the nature of the motion.

Mr Boushy: I'd just like to say there are two key words in the resolution. It's to "review," the second page to "examine." If we don't have authority to review and examine things that relate to this committee, we might as well pack up and go home. I think it's very important to review and examine. The discussion and debate comes right after.

Mr Bartolucci: Is there not the motion for referral to the subcommittee? I thought I heard Mr Hastings ask for that. I always thought, when I was on municipal council, that—

The Chair: He suggested it, I think.

Mr Bartolucci: It was a suggestion, or was it a motion for referral, Mr Hastings?

Mr Hastings: I made a referral motion.

Mr Bartolucci: All right. So clearly that is without debate.

Mr Hastings: I don't know about the rules. It's probably not.

Mr Bartolucci: And we've had significant debate after that motion.

The Chair: I'm sorry, Mr Hastings, I didn't hear you move that as a formal motion.

Mr Hastings: I suggested this item ought to go to the subcommittee as a test item as to whether this kind of a situation can be examined by the committee, and if it can't, why can't it—under the standing orders, it seems very clear it can—and to come back with some consensus on how it should be handled, and other items, because what the members of the two other parties are saying is that while everybody can bring something to the table that day, they would appreciate getting some advance notice of it.

The Chair: Would Mr O'Toole be willing to withdraw the motion and refer the matter to the subcommittee?

Mr O'Toole: No, I would not be prepared to withdraw the main motion.

Mr Bartolucci: But, Mr Chair, he doesn't have to withdraw it. Simply, the motion's on the floor. It's been referred. Is it not my understanding that a motion of referral is without debate?

Mr O'Toole: There's no debate on a referral anyway.

Mr Silipo: Mr Chair, if I may—

The Chair: Mr Johnson's next, Mr Silipo.

Mr Ron Johnson: My understanding, Mr Chair, is that there was no motion on the floor, it was simply a suggestion from Mr Hastings. Number one, that's your call; I understand that.

The Chair: I recognize it as a point of order.

Mr Ron Johnson: On a point of order, exactly. So my understanding is that there is no motion on the floor other than the one we have here.

Just to speak to it briefly, if I may, I think it's very important that everybody in this committee take a good, hard look at this motion. Nowhere in this motion does it talk about the recent events in this Legislature in terms of specifics. We're not trying to be judgemental here in terms of reviewing this. What we're dealing with are the authorities of the Speaker and of the Sergeant at Arms. This motion deals with reviewing the standing orders as they currently stand. So quite frankly, not to engage in debate over recent events, because that's not what this motion does, this motion is simply calling for us to review the standing orders and the powers that we've empowered the Speaker and the Sergeant at Arms with.

So I will support this motion. I think it's very important that we get to this issue and start dealing with it right away.

1630

The Chair: Mr Silipo, you are next.

Mr Silipo: I guess I first of all want to be clear, Mr Chair, what it is that we're dealing with. You've ruled that Mr O'Toole's motion is in order—

The Chair: I did.

Mr Silipo: —and so we have in effect the motion before us.

The Chair: No, we're discussing the motion, the merits.

Mr Silipo: It would certainly be appropriate to refer—a motion to refer, in other words, would be in order, because we now have the motion in front of us. I'm prepared to move that, but before I do that I would ask, Mr Chair: In ruling this motion in order, what is your understanding about what happens from now on? The fact that we decide as a committee that we want to do this doesn't make it happen. The committee has to be authorized to meet. The only way the committee gets authorized to meet is if the three House leaders agree that the committee is going to meet for this purpose.

So we're back at the point that I was trying to make earlier more subtly, Mr Chair, which is, you can't deal with this issue at this committee without a discussion taking place among the House leaders.

The Chair: No. I ruled that the motion was in order.

Mr Silipo: I understand that.

The Chair: If you choose to appeal that motion you can appeal it to the Speaker, Mr Silipo.

Mr Silipo: No. Well, I could choose to do that but I'm not going to do that, Mr Chair, quite frankly because I think that the issue is an important one, and what I really wanted to stress to you and to Mr O'Toole was that the point I was trying to make was that this was not the proper way to deal with it. Whether it is on the strict application of the rules or whether it's in the commonsense way of dealing with these things, I'm sorry, it doesn't make a lot of sense to bring substantive motions like this on major issues without at least the courtesy of flagging it for the opposition parties and saying you intend to do this. You just do yourself a disservice when that happens, I say to Mr O'Toole.

Now that the motion is here, I'm going to say a couple of things on it. I just want to say that I think it's import-

ant that members of the government understand that there are not at the end of the day very many powers that members of the opposition have in terms of procedures in the Legislature, and when members of the opposition decide to use certain powers that they have at their disposal—and I hope that the members will at least appreciate this point—we do so after a lot of careful thought.

The events that happened the other day—and let's be clear about it—part of what I think is here before us, while it doesn't deal specifically with the issues that occurred in the House last week, clearly flag that particular issue and that concern, because the suggested examination of these matters does include the questions of the authority of the Speaker to name members, the use of force by the Sergeant at Arms to eject members who have contravened the standing orders when they've been named by the Speaker etc.

I think it's important that members understand that when we use words like "holding up the House to ransom," there are in fact substantive issues and important issues that members of the opposition sometimes feel that they need to make and can only make, unfortunately, by using to the extreme the rules that are available when in fact less draconian measures and more desirable measures are available but unfortunately sometimes in the ebb and flow of things are not able to achieve that same end.

Just to make one point, I have some serious reservations with the way in which I understand that a particular standing order, as it relates to one of the members of this Legislature, Mr Curling, has been applied and has been interpreted by the Speaker, if he has interpreted, because I'm not clear—the only thing I'm aware of is what I read in the media reports—and I'm concerned about the way in which that particular standing order, standing order 15, has been interpreted by the table officers. I completely disagree that the actions, for example, that Mr Curling took resulted necessarily in his having to be excluded from the House for any more than the one day. I may not be in a majority in that view, but as I read the standing orders, that is the extent of the penalty. The House, in my view, and as I read the standing orders, could have decided upon motion to discipline him by removing him from the House for a period of time up to 14 days and further actions could have ensued after that. But that's my understanding.

But just to point out, there isn't one blanket way of looking at this, either in terms of the reasons why things happened last Wednesday and Thursday evening, or indeed the way in which the rules are read and how the authority of the Parliament meshes with the right of the government to govern. As a member of the opposition who was also in government, I feel very strongly that the government of the day, at the end of the day, has to have and has the right to govern and has the right to pass whatever legislation it deems appropriate. The rules have to allow for that and indeed, I believe the rules allow for that.

But I think that it is also an important part of the parliamentary process that the opposition has certain rights, and those aren't there by accident. In any examin-

ation that we may want to take of this, I hope that people would be open-minded enough to understand and keep in mind that we aren't talking here simply about the rights of a government to do what it wants, but we are talking also about that right in the context of the parliamentary procedures that have been part of the Parliament of Ontario for decades and decades.

If it's in order, because I don't know, Mr Chair, if it is in order at this point, given that I've spoken on the subject—

The Chair: Mr Silipo, I've ruled it as being in order.

Mr Silipo: I'm sorry, no, if what I'm about to say is in order, if it's in order for me to move a referral of this to the subcommittee, then I would do so at this point.

Mr Ron Johnson: Deal with the motion on the floor first.

The Chair: Mr Silipo has moved that this matter be referred to the subcommittee. Is there discussion on that motion? No? All in favour of the motion? Opposed? The motion is defeated.

Mr Bartolucci, you were quite anxious to say something, if you're still wishing to.

Mr Bartolucci: Obviously, the motion for referral that was debated for the last 10 minutes has now been defeated, so half the problem we have around here is we don't follow the rules the way we should follow them. In fact, had we followed the rules this wouldn't be here at this point in time and would be referred properly to the subcommittee, but that's already been defeated so I would be out of order to comment on it and I don't want to be out of order.

Mr Grimmett: Mr Chair, I would like to hear why matters have to be referred to the subcommittee to start off with. I was under the naïve impression that I could come into a committee and raise an issue for discussion.

The Chair: I don't think it's essential in a legal sense, according to the standing orders, but I think members of the opposition have expressed the view that that's the most appropriate way to deal with it.

We have the motion before the committee. Is there any further discussion on the merits of Mr O'Toole's motion? Seeing none, I call the vote. All in favour of the motion? Opposed? The motion is carried.

I would ask committee members for suggestions as to how much time we would seek from the House leaders to discuss the issue that Mr O'Toole has raised in the motion.

Mr O'Toole: If I may speak, I have also given this some thought and in respect to the other members who live a further distance apart, I think initially that we'd need a week. I think if we approach this as a team of people looking objectively at how to get better service—and I mean that sincerely—right from the outside of the building. What are the barricades up there for? I don't know and I don't even know who authorized it. Who calls the police? I've got some tough questions on the outside long before I get on the inside. I want people to feel invited and accessible to this place, so my feeling is that if we have a full week and we're looking at the general issue of accessibility and security, both inside and outside the building, I think we'll address a lot of that.

The standing order parts—the protocol of the Speaker becomes a much more technical process. What does he do when something happens? I don't think it's there. We've seen some need to address that urgently, I think, for the assistance of the Speaker, whoever's in the chair.

1640

I think at the maximum I would like to get an allocated time of two weeks. It would be up to this entire committee, not a subcommittee, a special, little élite group. I'm sincere about this. I think we can come back with a meaningful message that we aim to get on with doing business here in a parliamentary fashion with dignity, which the people of Ontario demand.

So that's kind of a two-week request, in my view. I'm interested in other people's opinions.

The Chair: Are you moving that as a motion?

Mr O'Toole: Yes, that's a motion.

The Chair: That's a motion before the committee. Any discussion on the motion?

All in favour that the standing committee on the Legislative Assembly be asked to—

Mr Ron Johnson: On a point of clarification, Mr Chair: In the two-week time frame we'd be dealing with both issues around the 29th? Is that the deal? Or is it two weeks specifically for this motion and one week for the prior? I'm just looking for clarification.

The Chair: I would gather that it's two separate weeks, is it not?

Mr O'Toole: Two separate weeks. It could be before, because they've assigned a week on the week of the 29th, which is a Monday, in order to deal with the sergeant's external security report.

The Chair: So, Mr O'Toole, you're suggesting two additional weeks on top of the one week that we've already requested.

Mr O'Toole: Because if you look at some of the standing orders, the ones referred to by Mr Silipo—15(d); there are two other standing orders that escape me right now—that I looked at—because as a new member, I'm trying to learn them and I see the blatancy within the rules and some of the ambiguity in the rules. But I don't have the background, which I'd like to acquire, and I'm sure all the members would, by looking at other jurisdictions.

For example, I know in council it wasn't a requirement to vote. You could abstain. What's the problem with abstaining? Maybe we should introduce that as a new standing order. Also in the Parliament of Canada they do not have to vote. They can abstain from voting. They don't lock the doors during a vote.

There's a lot of things that I think could expedite more effective, efficient ways of delivering good government, and that's what this is about. It's not about allowing someone to defecate in the Legislature. That's completely unacceptable, and I hope you picked that up as we've hit the bottom. If I'm going to be seen on television, it's not going to be on that kind of team, I'll tell you right now. It's going to be on a team that's focused on results and has integrity. That's a two-way street. We're also responsible too.

Mr Morin: Are you questioning our integrity?

The Chair: Mr Johnson is next.

Mr O'Toole: The integrity of what went on there is—

The Chair: Mr O'Toole, are you finished?

Mr O'Toole: That will be coming out in the debate.

Mr Morin: Are you questioning our integrity?

Mr Ron Johnson: Not to speak directly about any circumstance, but I think that if we have one week—

Mr Morin: Mr Chairman, I would ask for an apology.

The Chair: Mr O'Toole, do you have a response?

Mr O'Toole: The behaviour that I am speaking to in the House questions the integrity of every member who does not take exception to it. You, specifically, Mr Morin, I was not questioning your integrity; it's the rules by which our behaviour is governed that I was questioning. That's what motivated me.

If you wish for me to retract the statement if you felt it personally, I have no discomfort with withdrawing that particular reference. I do mean that sincerely. You are of the highest order of dignity in the House and you're wearing the Speaker's uniform right now. So it's not implied at you; it's applied at me. I felt terrible. I felt demeaned. That's how I felt, and I think a lot of members did.

The Chair: Mr Johnson, did you have a comment?

Mr Ron Johnson: Yes, just with respect to the time involved for the sitting, my understanding is one week has been set aside for the external review of security. Is that correct? Now on the floor is another further two weeks to review this particular motion. Being new to the committee process, I believe that we can get a tremendous amount accomplished in a week and I don't know that we need two weeks of committee time to deal with this particular motion. I think if we have one week of committee time for external security and then another week of committee time for this particular motion, that would be sufficient, as opposed to three total.

Mr R. Gary Stewart (Peterborough): The motion has already been passed.

The Chair: The motion is to request two weeks and you're suggesting that—

Mr O'Toole: It's a good question; I don't know the rules either. If we set aside two weeks specific to that subject, does that mean all of the staff and all of the resources are committed for two weeks, even if I only use one day?

The Chair: That's a question, Mr O'Toole, that probably the subcommittee would want to determine, assuming we get the weeks that we're requesting, as to exactly how we're going to deal with it.

Mr O'Toole: I don't want to be sitting around for two weeks if it only takes two hours.

Mr DeFaria: Maybe the request should be worded "up to two weeks" instead of "two weeks."

Clerk Pro Tem: That's fair. Generally, when time is requested, it's understood that you don't have to use every single day. A week can mean two days, three days, four days, five days. It's your choice.

Mr O'Toole: In response to that, what I was really trying to do was avoid saying, "Gee, if we just had a couple more days." I believed it was a generous request, but it may, in my opinion, take much less time.

The Chair: So what exactly are you moving, Mr O'Toole, that we request to sit for two weeks?

Interjection: He's already done that.

Mr O'Toole: It's a total of three weeks; we may only need one to do it all. The subcommittee's going to meet.

The Chair: All right. Any further discussion on the motion?

Mr Bartolucci: Call the question.

Mr Miclash: The House leaders are not going to agree to this. We're wasting our time.

The Chair: All in favour of calling the question? Agreed. Opposed? Carried.

Mr Hastings: On a point of clarification: I would like to know, Mr Chairman, and perhaps you could find out before the next meeting—

The Chair: Mr Hastings, I'm sorry. We have to have the vote now. That's the next order of business.

All in favour of Mr O'Toole's motion?

Mr Ron Johnson: We voted on that.

The Chair: No, we voted to move to that point. Opposed? The motion is carried.

Mr Hastings, you have other business you want to bring to the committee's attention?

Mr Hastings: Mr Chair, the question I would like to ask you to look into is where in the standing orders is there a reference that this committee is excluded from dealing with this item, even though we voted on it? Because the members opposite keep saying the House leaders aren't going to like this. I would like to find out, informally from you, by the next meeting where in fact the House leaders deal with this kind of item and the committee can't, even though in the way in which the standing order is written, it's pretty all-encompassing. I'd like to find out exactly where the all-encompassing stops on this item and the House leaders' priorities start. That's all I'd request.

The Chair: I think the clerk can answer that question, but essentially it is under the standing orders that the House leaders make these determinations to authorize committees to sit in the intersession when the Legislature is not in session, but the clerk may want to add something to that.

Clerk Pro Tem: Mr Arnott was referring to when the House is not sitting and a committee is meeting during the session, they need the approval of the House, a motion to go to the House to authorize them to sit. I believe what the opposition members were referring to about the House leaders is that normally the House leaders get together and agree upon some sort of schedule for the committees during the recess. They may want to add or change that.

Mr Ron Johnson: So what you're saying—

Mr Hastings: That's not my point, as to when this committee or any other standing committee of this

Legislature can sit or not sit. I would like to know precisely among the House leaders where this point of decorum can't be raised by this committee. Can it not be raised simply because it can't be included in the scheduling?

The Chair: I don't think that's in question, whether or not the committee has the right to deal with this.

Mr Hastings: It is the issue.

Mr Froese: Some of it was alluded to before, about the House leaders not agreeing to this. They'll never come out and not agree to this motion, but what they'll do is they'll agree or disagree that we sit. My concern now is, the opposition is going to go to their House leaders and say, "Don't agree to allow this committee to sit because this is the issue that they're dealing with." This is why we're talking about democracy as well. That's where the whole situation is with respect to—are the House leaders going to deal with the one motion and then the other?

The Chair: It's up to the House leaders to determine. All we can do is request the time that we feel is appropriate.

Mr Silipo: I really do understand the points that are being made by several of the government members and I'm particularly respectful of the fact that as I look across, they're all members elected for the first time, and those of us sitting here, who have been here for more than one term, know that and appreciate that and respect that.

I find it difficult to express this point. Yes, this committee clearly has certain authorization that it has under the standing orders. To address in part Mr Hastings's point, it is, as you were explaining and the clerk was explaining, Mr Chair, by virtue of one of the standing orders—we can certainly refer Mr Hastings to the particular one—up to the House leaders to determine, unless the House otherwise, because the House, of course, could direct a committee to do certain things during the intersession. But in the absence of that, committees meet only upon agreement of the House leaders and for particular periods of time to deal with particular things, which is why I was making the point earlier that if you want to deal with an issue as important as this, you don't do it by raising it under other business and insisting that it be addressed through a vote that you can carry here, because it doesn't count for much at the end of the day.

1650

I don't want to demean in any way the points that have been made. What I was trying to point out before and what I want to reiterate again is, if you've got a substantive issue that you want to put before us, especially an issue as important as this, I think it behooves members to sort of not take everything that comes from this side as being in opposition to what you are doing, but to sometimes also understand that we do agree that there are some important issues here to be discussed. The way in which we go about deciding how we're going to have those discussions is as important as the discussion itself.

We've got the issue now; it's out there. I really have to say, Mr Chair, I regret very much the way in which this issue has been brought here, especially because I

know, as I said earlier, that this was discussed to some extent among the three House leaders. There was not agreement there that it should come to this committee to be discussed. Now that of course doesn't preclude Mr O'Toole or anybody else, as a member of this committee, from legitimately making the point and saying that they think it should be. That's fine. But at the end of the day, you don't do yourselves any favours by insisting on it that way, I guess is what I'm trying to say.

The Chair: Any other comments from committee members?

Mr Stewart: Going back to what Mr Silipo said, and it's just for clarification, are you suggesting that what went on is not part of protocol, protocol being part of the mandate of this committee? It's just for my own clarification. You're saying that it shouldn't have come to this committee.

Mr Silipo: No. I'm sorry, Mr Stewart. No, I'm not saying that. I think someone read out the standing order—

Mr Stewart: Okay, because I just assumed it was—just more clarification. I'm not arguing with you, just more clarification.

Mr Silipo: I think the standing order does allow this committee, as I understand it, the latitude to deal with the standing orders. I was never debating that. I think, for example, it would have been perhaps more helpful if the concern had been raised as something that a member or members of the committee thought should be addressed somehow, and then perhaps a direction through the Chair to the subcommittee and discussion with the House leaders to sort out a way to deal with that.

I think that's a more constructive way to (a) flag the concern and (b) try to deal with it. The way this is going now—I mean, I don't know. I'm not sitting here saying the House leaders aren't going to agree. I don't know. But I can tell you that based on the discussions so far, I'm not sure where this is going to get us.

Mr Stewart: The reason I said that, it's something I brought up three weeks ago and asked that it be put on the agenda for the meeting after security. So I guess protocol was on the table. Maybe this little incident has accented it a little bit more. I guess that's where I was trying to—it's not all of a sudden it's just happened. It was there to be looked at.

The Chair: You did raise that some time ago, Mr Stewart, and thank you for that comment.

Mr Boushy: A point of order, Mr Chair: Isn't this out of order now that the motion has been passed?

The Chair: I'm not sure. I'm just trying to allow additional discussion because members seem to want to make some additional comments.

Mr Froese: I don't totally disagree with Mr Silipo's comments with respect to what is good, what is protocol and so on and so forth. I guess part of it, from my perspective, is out of naïveté, because I'm a new member. I don't know how we get this issue on the table to discuss it openly. I understand from the opposition parties about getting duly democratic process as a result of what has happened in the House just recently and understand

your position to some degree, even though you probably don't think so, on why what was done was done. I understand that.

But on the other hand, we're trying to understand—we've got the rules and regulations, why aren't we living up to it? If the House leaders aren't agreeing to get this on the table to discuss openly and to debate it, how does anybody deal with this whole situation? What do we have rules and regulations for?

Mr O'Toole is exactly right. There are a lot of us—and it's not through the government House leader's office—

there are a lot of us that have problems with what we're seeing, what has happened, and right from day one. That's what we're questioning, or bringing the whole question to the standing orders and the rules and regulations. Are we living by them or aren't we living by them? What has the government side done that makes the opposition do what it does? That's all we're trying to do.

The Chair: Seeing no further discussion, at request by members, I will adjourn the committee and we'll finish our business.

The committee adjourned at 1656.

CONTENTS

Wednesday 13 December 1995

Assignment of ministries	M-5
Use of chamber	M-5
Committee business	M-6

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

*Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

*Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Clerk pro tem / Greffière par intérim: Bryce, Donna

Staff / Personnel:

Yeager, Lewis, research officer, Legislative Research Service

Sibenik, Peter, procedural research clerk, office of the Clerk

120N
C20
L20



Publication

M-3 & M-4

M-3 & M-4

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Tuesday 30 January 1996
Wednesday 31 January 1996

Standing committee on
the Legislative Assembly

Security of the legislative precinct

Journal des débats (Hansard)

Mardi 30 janvier 1996
Mercredi 31 janvier 1996

Comité permanent de
l'Assemblée législative

Sécurité de l'enceinte parlementaire



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Tuesday 30 January 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mardi 30 janvier 1996

The committee met at 0901 in room 228.

SECURITY OF THE LEGISLATIVE PRECINCT

The Chair (Mr Ted Arnott): This meeting of the standing committee on the Legislative Assembly is called to order.

We have with us today the Speaker of the Legislative Assembly, the Honourable Allan McLean, and we're expecting the Clerk of the House, Claude DesRosiers, shortly to arrive. Also Tom Stelling, who is the Sergeant at Arms, will be giving us a presentation about security issues. Mr Speaker, welcome to the committee.

Hon Allan K. McLean (Speaker): Thank you, Mr Chairman. It's a pleasure to be here.

The Chair: We're glad to have you here. I'd like to open the floor to you.

Hon Mr McLean: I want to give you a little history of the security in the Legislative Assembly and I want to go back from 1973 to the present.

In 1973, the commissioner of the Ontario Provincial Police placed a new policy in operation where, in all locations in the province, OPP officers who were employed in non-police duties would be returned to more traditional functions. They would be replaced by a new force to be called the Ontario Government Protective Service. This group would be trained to provide security for all government buildings. Night watchmen employed by public works and new recruits were combined to form this new force of 150.

The OGPS replaced the OPP in the Legislative Assembly building and the gentlemen ushers in the galleries of the House. Although members of the new force had been trained to provide security for government buildings, their attempts to work in the legislative environment were most unsuccessful. Members of the House were stopped from entering the chamber, many strangers gained entry on to the floor of the House and other problems arose during the first few years that the new force was in operation. To add to the difficulties, a rotation program that changed the OGPS personnel from the Legislative Building to other areas that the OGPS served resulted in the fact that no specialty training could be provided to the small group of security officers that the assembly required from this force.

Security for the Legislative Building, other than the chamber, during these years was not the Speaker's responsibility. The building came under the control of public works.

In December 1974, the Legislative Assembly passed the Legislative Assembly Act, and under the act, the Speaker gained control over the security in the legislative

chamber and all other parts of the Legislative Building designated by order in council. The act stated that the Speaker shall establish security guidelines for these areas. While the Speaker was given the responsibility for security, he lacked the control over the staff engaged to protect the assembly.

In the fall of 1976, the assembly acquired a new Sergeant at Arms. One of the Sergeant at Arms' duties focused on making the most of this non-parliamentary protective service. The assembly's standing orders were changed to give direction over security personnel to the Sergeant at Arms, and verbal agreements were made to reduce the changes in protective staff around the House. Training sessions were established. Meetings were held with senior OPP staff to bring their attention to the problems the assembly was having with basic security. The security situation improved; however, due to a constant turnover of security staff, many basic problems continued.

A gunman killed and wounded staff in the Quebec National Assembly on May 8, 1984. That evening, the Board of Internal Economy met to consider the implications of this incident in Ontario. Present at that meeting were senior members of the OPP, and one of the points raised by the OPP was the need for weapons during this type of incident. Members of the board were very vigorous in their argument that the current staff, the OGPS, were not qualified to carry guns. The meeting ended with a request that the OPP report back to the board with recommendations to prevent this type of event in Ontario.

The major recommendation of this report was to bring a six-person OPP force into the Legislative Building; to have two of these armed officers in plain clothes in the public gallery, one officer in the main lobby and one more outside the door of the chamber. This recommendation was accepted by the Board of Internal Economy, and thus a detachment at Queen's Park was formed. The detachment was made up of a staff sergeant, a corporal and four constables from the OPP, and a staff of 35 from the OGPS, supplemented by 19 extra OGPS while the House was in session.

In 1988, a memorandum of understanding was signed by the Speaker and the Minister of Government Services. This memorandum gave the Speaker responsibility for the entire Legislative Building, grounds and parts of the Whitney Block. This memorandum was followed up in 1990 with an order in council confirming this agreement. Although this change brought this Parliament into line with other major parliaments, it presented major problems for the Speaker with security. The Speaker now had the responsibility for all of the Legislative Building, grounds

and parts of the Whitney Block, and still did not have any direct control over the security staff working in his buildings.

To resolve this situation, an agreement was reached between the Speaker and the Solicitor General in November 1992. This memorandum of understanding confirmed the Speaker's authority under the Legislative Assembly Act for security of the legislative precinct and established a framework for the provision of security services by the OPP and the Ontario Government Protective Service to the Speaker on a chargeback basis.

On June 14, 1993, a mentally unstable woman walked on to the floor of the House shouting obscenities at the members. Speaker Warner requested a security review. With the results of this review, the Speaker attempted to establish a new security program for the precinct. The program dealt with access to the building for the public, as well as other concerns over couriers, parking, perimeter control, exterior surveillance and demonstrations.

This program was not accepted by some members; however, the Speaker decided to proceed with the changes. A staff committee comprising all three caucuses and assembly staff met to provide the Speaker with a method of implementing his program. The three caucus staff withdrew from the committee before the election this year, and since then, I have directed this staff committee to adjourn its meetings until I've had this opportunity to meet with you.

0910

Earlier this year, after the Oklahoma City bombing and the Prince Edward Island incidents, the former Speaker instructed security to immediately put into place an identification check at all doors to the building and set up a courier scanning program, both of which are still in effect.

Over the last eight years, there has been a dramatic increase in the number and severity of security incidents, from attempted suicides, weapon offences, criminal activities, assaults, bomb threats, death threats and violent demonstrations within the legislative environment and in the community that surrounds us.

On October 18, 1988, a group of injured workers gathered in the building and rushed the doors of the chamber. On February 4, 1993, two women put on masks and attempted to attack the Premier during a media scrum outside his office on the second floor. On December 9, 1993, Power Workers' Union members attacked security personnel and charged through the front doors, trying to enter the building in an attempt to demonstrate.

On December 2, 1992, Labour minister Bob Mackenzie's Hamilton riding office was set on fire. On September 7, 1993, a bomb blew up at the back door of one of the Toronto cabinet ministers' riding offices. On June 9, 1994, gay-lesbian rights activists staged a demonstration inside the Legislative Building and refused to leave, causing security to physically remove them. Three security officers were injured. On September 27, 1995, during the opening of the House, a major demonstration occurred where outside police forces were brought in and used to prevent demonstrators gaining access to the building.

The present situation: In response to these and past security concerns, many improvements have been made in security over the years. The security staff now employed within the precinct are assigned to the assembly permanently and are no longer rotated between government buildings and the assembly. Special parliamentary security training is provided on a yearly basis. Security has been equipped with closed-circuit television systems for both inside and outside surveillance, portable radios, metal detectors and X-ray scanners, which are used daily to assist the security program. A safe mail program is effectively operated and a security audit of members' offices is carried out upon request. A duress button system is available to all members' offices and is effectively being used. As well, the staff photo identification program is beginning to prove effective.

However, there has been a reluctance to address one of the major problems that affects the security of members, staff, pages and visitors, and that is the lack of crowd management and assessment of persons wishing to visit members' offices, committee rooms and the chamber.

The Legislative Building draws approximately 250,000 visitors each year. Bus tours, school groups, walk-in visitors, members' guests and demonstrators make up this number. Security staff are expected to pick out from the quarter-million people the ones intending to harm, demonstrate or threaten occupants of the precinct. Without a well-managed entry control system, this is impossible.

As the committee is aware, I'm responsible for the security of the precinct. The Legislative Assembly Act states: "The Speaker shall establish guidelines for the security of the legislative chamber and other parts of the Legislative Building that are under his control."

On Thursday, October 5, I indicated to the House that I would be seeking the advice of the standing committee of the Legislative Assembly on how best to meet this obligation. To that end, I am requesting your committee consider the broad issue of security at the legislative precinct.

Of immediate and particular concern to me are controlled access to the building; requirements for members, staff and visitor identification; a protocol for public demonstrations; and crowd control and crowd management.

I am anxious to develop clear and fair security policies and guidelines that ensure a safe workplace for all occupants of the legislative precinct and those which do not unnecessarily impede or deter access to the building.

Due to the confidential and sensitive nature of security matters generally and reports on specific incidents in particular, I recommend that a permanent subcommittee on security be established which would include attendance by the Speaker and the Sergeant at Arms. The subcommittee would meet on an ongoing basis to review security in the precinct and provide me with recommendations.

With respect to the incident on opening day, the appropriate procedure would be for me to meet with the subcommittee to share the details of the report prepared for me by the security service. The report itself and the discussions around it would, of course, remain confidential.

Between the winter and spring session, which is happening now, I recommend the committee visit the House of Commons in Ottawa and the Quebec National Assembly. This will allow the committee to review two different security models and compare them with what we are doing in our assembly. I would be happy to join this committee for this visit. If the committee would find it helpful, I will arrange with my staff for a complete tour of our Legislative Security Service, which I understand is also happening.

I want to thank you for your time, and I know with your assistance we can achieve the level of security we require in this Legislative Assembly.

The Chair: We have a fair bit of time right now. Mr Speaker, would you consent to answer some questions of members of the committee if they have them at this time?

Hon Mr McLean: Certainly I would.

The Chair: I'll turn to the Liberal caucus first and turn it over to Mr Morin.

Mr Gilles E. Morin (Carleton East): I don't have any questions at the moment. I just want to hear the reactions of the others.

But perhaps I should raise the issue. I think what the Speaker is asking is very reasonable, makes sense; I don't like to use the words "common sense," but it does make sense. I don't see why we should not acquiesce to what he requests. Perhaps before we do so, we'd like to know what it would imply and what the security officials have to say so that we can maintain also the building in such a way that people can come in and out and visit it, because we're proud of this building, so that it doesn't become a fortress.

Some of you will have a chance to go to Quebec City and you'll see the type of system that they have over there. You'll see also how they operate in Ottawa. When someone wants to visit a member, there is a procedure that has to be followed. I agree with that. There's nothing wrong with that. Society has changed. Society evolves constantly, and we have to take the measures to protect this building, mainly to protect the members and protect the pages and protect all the personnel.

Mr Frank Miclash (Kenora): Thank you very much, Mr Speaker, for the presentation. The courier scanning program for the couriers coming into the building: What does that involve? I know there was some concern raised over that over the last couple of years.

Hon Mr McLean: I'll have to refer that to the Sergeant at Arms.

Mr Thomas Stelling (Sergeant at Arms): Just after the incident last summer, Speaker Warner asked us to quickly arrange for a method of scanning parcels that came into the building other than the ones that came through the post office, which we were already doing. We set up over a weekend a system, and it is still in effect in the receiving room at the northeast corner of the building, where people who are delivering packages to members or staff offices in the building take their parcel there, it's scanned by a sophisticated X-ray scanner that's able to detect plastic explosives, and at that point it is taken to the member's office either by way of the in-house messenger service or in some cases staff will come down from the member's office to pick it up.

It's not a perfect system. We did the best we could under difficult circumstances using existing resources, but it seems to be working.

0920

Mr David S. Cooke (Windsor-Riverside): I just have a couple of comments and then maybe a question. Nobody in any of the parties has any difficulty, obviously, with accepting the fact that there needs to be adequate security. That's a motherhood statement. We've always had that view. It's always been a debate on the level of security and the balance between recognizing that this is a public facility, and the most public facility of any public facilities—if people can't have access to their Parliament in a democratic society, then what does access to public facilities mean? I think that is something we need to continue to be aware of. We've got to keep all of this in some perspective. We've had some difficult situations around here, not just in the last few years but over the years. When there's a difficult debate that's occurring or a difficult piece of legislation that's being introduced, then there are demonstrations that have occurred. You mentioned the injured workers one in 1988. I believe there were some before 1988. There certainly have been since I've been around here, and I'm sure there were before 1977 as well. So let's keep this all in perspective.

The incidents that have occurred around here have been minor in the big picture of what has happened in other jurisdictions. My concern is that we're moving too far without adequate consultation and without any good reason. It bothers me to see cameras being put up throughout the building and I'm glad that some of those internal cameras that were going to be installed have not been installed. It bothers me that on occasion—and I might say I even saw yesterday, looking into the west gallery, when a woman was appropriately being escorted from the gallery, that one of the officers grabbed that person and dragged her up the stairs. There was no need to do that. Nobody was threatening the members of the assembly. They were interfering with a vote, which is wrong. They were encouraged by a member to interfere with a vote, which is wrong. I don't support that activity, whether it's a member of my own caucus or a member of any other caucus. But I think you've got to be very careful.

I keep getting concerned that there's still not enough training, or that when an order is given to clear a gallery, that overwhelming order takes hold and people don't use common sense on how to execute that order. Quite frankly, yesterday I think we could have just continued to take the vote. There was nothing that was so overwhelmingly interfering with the vote that we couldn't just continue to do it. But when the order is given to clear, then I think it has to be done with some common sense.

I would also argue—and you refer to it in your statement on page 4—about the day that Bill 164 was defeated and members of the gay and lesbian community were in the Legislature on the stairs and wouldn't leave the building. Therefore, as you say, they had to be removed. That's one option. The other option would be to maintain security around that demonstration on the stairs, let things calm down and have people exit themselves. There's more resistance and determination to

maintain a demonstration when there's force being used to try to stop that demonstration. I think sometimes officers who are given instructions to do something seem to think: "Okay, we've been told to stop this demonstration and to clear people out. Let's do it." There were horrible scenes that day that I don't believe were necessary. Whether it's training, whether it's the way instructions are given, I think that's part of the issue.

I also believe that there is—and this is something where we can't institute common sense. I've never been given an adequate explanation as to why the day that we were in my office putting up the children's petitions—the Sergeant at Arms came to talk to us and said you wanted those down. That's fine. I don't agree with that, but that's fine. He was operating on instructions from you. But up further there was a plainclothes OPP officer taking pictures of me and my staff. I was offended by that. I don't have any idea what security risk were five people, who were staff, and one MPP. What right does anybody have, quite frankly, to intimidate staff to the point where a plainclothes officer was taking pictures? I raised that in the House, Mr Speaker, and not once have my staff been contacted or have you contacted me.

If you want us to take you seriously in terms of your determination to deal with security issues, then you'd bloody well better take our concerns seriously, and I think you owe me at least an explanation of why that incident occurred and why it wasn't even investigated. Nobody even investigated that particular incident. There have been incidences raised by Liberal members of the assembly and by members of our caucus about the level of security around this place, and never once has there been an explanation offered by you yet when we see truckloads of horses and officers for demonstrations that have occurred year after year after year, intimidating people from even coming near this particular place.

I want to cooperate and I do believe, yes, you have the legal responsibility under the act to deal with security. That's not how it has ever, in practice, been practised around here. Security measures have not taken place or been instituted without a consensus being developed between representatives from the three parties. I hope we will maintain that situation. Otherwise it's going to be difficult; there won't be support. I still believe—and I'm not satisfied with the process that this committee is using—that if we really want to deal with security issues, we've got to take a look at some of the incidences that have occurred around here so that we can learn from them—not so that we can put blame, but so that we can learn.

I'm convinced that we could learn a lot if we would open up this process to some of the people who participated in the demonstration on throne speech day. I certainly will be during the two hours that have been made available to my caucus. I have invited some people who participated in that demonstration to come and appear before the committee. But I still am very concerned about who made certain decisions and why those decisions were made, why it was that nobody, none of the groups that were demonstrating—and there really was only one group, it was a coalition of organizations. They were refused access to the front steps. They were refused

access to the PA system. I think myself that it's a mistake what you have done out front, of not allowing any demonstrators to use the steps any longer to speak from, because that actually had an impact, in most instances, of keeping people away from the doors and having the demonstrations organized in a better way that provided for more security.

But, again, that decision was made. I certainly wasn't consulted. I'm a member of the Board of Internal Economy. I'm the House leader for our party. I was never consulted on that. You refused access to the PA system that day. The mess out front now of this place—to have those metal barriers permanently installed—makes this building look terrible. It looks terrible in a building that's supposed to be one of the most important and beautiful buildings in this community and in this province.

I have a lot of concerns about the process, I have a lot of concerns about incidences that have occurred here and I want to say again as bluntly and clearly as I can to you, Speaker, if you want cooperation on security from our caucus—and we want to be part of that—then it's going to require a response from you as well when we raise incidents, and at this point there hasn't been an adequate response. Not once, as I say, on incidents that I have raised with you in the Legislature, have you bothered to call me. Even though you said in the House that you would look into the matter, there has never been an investigation. Nobody has ever been contacted, any of the staff who were involved in that particular incident. So if you want confidence in your ability to do this job, then I think it's going to take more than referring a matter to the Legislative Assembly committee, making a statement before the committee; it is going to require real dialogue and real investigations when there are concerns that are expressed to you.

0930

The committee's made a decision that you're going to go to Quebec and Ottawa and look at those systems. That's fine. I would argue that more important than any systems that are in place are the process and the communications between the three parties that are in this place and the Speaker's office. That will determine how security works around this place and whether it's successful, not any new technology that can be imposed on this place. It's going to be that basic, fundamental process that will determine whether we're going to have successful security arrangements around this place.

I'll finish by making one comment: again, common sense. We cannot ever have members of the Ontario Provincial Police walking around this building in their uniforms that they use when they're dealing with a crisis. I'm trying to look for the name of those uniforms. They're not the uniforms that are being worn today. They are the ones that the teams use when they're looking for criminals out in the bush. When I saw that one day, when there was supposed to be a demonstration out front, these officers walking around in those uniforms, to me that was frightening in itself, to get people that excited. I think the demonstration that day ended up having 200 or 300 people out front. I doubt whether democracy was being challenged that day in the province of Ontario. There's got to be some common sense used around this place.

That is going to be more important than any technology you might discover or anything you might discover in Quebec City or Ottawa.

The Chair: Mr Speaker, do you care to respond?

Hon Mr McLean: Yes, I want to reply to a couple of the questions and the ones with regard to the posters in the hallway. It was brought to my attention that they were being put up, but I simply asked if it was within the rules of the House if that was permissible. I said the rules of the House will be enforced. They told me that was not permissible to take place, and I would think that all honourable members would obey the rules of the Legislature. My answer simply was whatever the rules are was what we will follow. That was the end of it, as far as I was concerned. The comments that you made with regard to the police taking cameras, I'm not aware of any of that that took place.

Mr Cooke: Mr Speaker, though, I raised that in the House with you on a point of privilege and you said that you would look into it. I raised it in the House. It's on Hansard's record.

Hon Mr McLean: I have, and it was against the rules of the House. You, I believe, would be aware that it is.

Mr Cooke: To have my picture taken by a plainclothes officer?

The Chair: Mr Cooke, if you'd give the Speaker a chance to respond in detail.

Hon Mr McLean: Oh, not that part of it. I was dealing with the other part.

On the other thing, with regard to the barriers that are installed out front, my understanding was they were taken down when they were remodelling the building and they were put back up after it was done. It was my understanding that they had been there for several years. If that's not right, the Sergeant at Arms would probably have a better answer than I, but that was my understanding.

The speaker that you had mentioned that was not put out there, I was not aware of the reason why it wasn't. After all, it was about my first day on the job and things were happening so fast that there were a lot of things that I was not fully informed of and I was not fully aware of what was taking place. Perhaps the Sergeant at Arms would have a better answer for you than I.

Mr Cooke: Could I just, Mr Chair, because I don't think that the Speaker has responded to—I mean, this is just symptomatic. Do you not feel, as a member of this place—and the Sergeant at Arms was there—that if you were a member and you had a plainclothes officer in this building taking pictures when the only issue was in fact posters being put up on the wall, do you not find something offensive about that? We took the posters down. I admit, if that was against the—I don't think it's against any standing order or the Legislative Assembly Act. I don't think I broke the law. But if in fact that was your ruling, fine, the posters come down, but do you not find it a little bit offensive that a plainclothes officer would be standing there taking pictures? And when that's raised by a member in the House, would you not follow up on that, as you promised you would in the House?

Hon Mr McLean: Yes, I would, and I perhaps am a little late at doing what you've asked me to do. I think

you have to remember too that it was the first session of the House, there were a lot of things taking place. Perhaps my staff should have reported back to me a lot quicker than they have. Yes, I would agree with you.

The Chair: Thank you, Mr Speaker. We have a slide presentation that's been prepared for the committee and I'd ask the committee's advice. We could move to the Conservative caucus for questions, if there are any at this time, or we could start the video presentation. After the video presentation we would then turn to the Conservative caucus. Mr O'Toole?

Mr John O'Toole (Durham East): That's fine.

Mr Stelling: We had hoped to show you this before our tour tomorrow. It will just give you a kind of a highlight of what we're doing for security in the precinct and maybe it will help you understand some of the other issues. It may also give you some questions that you'd like to ask Al Hough, who is our manager here. Al is a staff sergeant with the OPP. With him is Inspector Hope, who does our incident commanding. He comes down when we're having a difficult incident and he takes control of the situation. Tomorrow they'll be with us on the tour and you'll be able to ask them questions on anything you wish. Right now, Al would like to give us a little bit of a slide presentation, if that's okay with the members.

The Chair: Would you state your name for the purposes of Hansard, please.

Mr Allan Hough: The last name is Hough, first name Allan.

As Mr Speaker outlined, the security at the Legislative Building is provided by the Legislative Security Service. The Legislative Security Service is composed of the following: As mentioned, there are both OPP and OGPS members who form the total detachment.

The Ontario Provincial Police complement of the detachment is myself—I'm the staff sergeant; I'm called "the manager" as well, under the memorandum of understanding. There are also one sergeant, who is the operations manager, and four OPP constables. All of those OPP constables are in plain clothes and they're also armed. The Ontario Government Protective Service complement are all uniformed, and there are 50 of those members stationed throughout the building.

As Mr Speaker has outlined, security is provided in accordance with the Speaker's security guidelines and the memorandum of understanding. In other words, everything we do here is based on the guidelines that have been set out for us.

So, you ask, what are they? The first thing the Ontario Provincial Police do is provide a management role. That's myself and the operations manager. We are responsible for the OGPS, as well as for the OPP. We're also responsible for outside crowd control. That's anything from demonstrations to any activity that may be occurring on the front lawn.

General enforcement and investigations: It's pretty self-explanatory:

Security to the members, staff and general public.

Security to any visiting VIPs that may come to visit the Speaker or the Lieutenant Governor, for example.

They liaise with the Sergeant at Arms. Under the current memorandum of understanding that we have, I'm required to have a daily meeting with the Sergeant at Arms to discuss matters of security.

They also conduct security patrols within the legislative precinct. Again, these are right from the Speaker's security guidelines that are presently in place.

We also coordinate and liaise with the OGPS. Again, we're all one unit here. There is no separation; we all operate as one unit.

0940

The Ontario Government Protective Service's responsibilities are the following: They provide general enforcement and investigations. If I can back up for a second, I just want to mention that the OPP are here only during business hours, Monday to Friday, 9 to 5. The other thing I want to mention as well is that the security for the Lieutenant Governor's detail, which is provided by the OPP, and the Premier's detail is not provided by the Legislative Security Service. It's provided by members of the OPP intelligence branch.

If I can get back to the Ontario Government Protective Service: They provide security for the members of Parliament, employees, general public using the building; security again for visiting VIPs. They liaise with the managerial staff. That will be members of ORC or any members who require their attention. They also conduct security patrols inside the building.

The OGPS also has another unit that we formed. It's called the entry control unit. It was a new initiative that we put into effect November 1, 1995, and it's a 10-person OGPS unit. The objective is to control access through all main points of entry to the legislative precinct.

The OGPS members are also posted at room 281, which is the Premier's office. There's also an OGPS at the chamber and OGPS officers in the Whitney Block, the tunnel area and also at the Whitney west door. These are posts that are all outlined in the Speaker's security guidelines of where officers shall be.

A further objective is to provide a consistent enforcement of entry control policies. As the Speaker mentioned, we had some changes with the Oklahoma bombing and stuff. This unit made it possible so we had a more consistent approach. In other words, the same people were doing the job all the time on a day-to-day basis, which has proven to be very effective.

They are also tasked with providing consistent response to emergency or crisis situations and those are responding calls involving demonstrations. They're out on the front lines, for example, yesterday with the demonstrators inside the barricades. They also respond to the duress alarms that I'm sure most of you have in your office. They respond to any sit-ins in the building, removal of persons from the precinct, clearing of the public galleries, and these members have received additional training to carry out their duties. Some of that training is crowd control, physical fitness and the use of force continuum.

There's also a sessions unit that's outlined in the Speaker's security guidelines. When the House is sitting, OGPS members must be at the following locations: the

east and west public galleries, the Speaker's gallery, the government lobby, the opposition lobby, the main entrance to the chamber, the landing outside the west and east public galleries and also at the metal detectors. I just want to let everyone know here that with the metal detectors which are located on the fourth floor we screen all people who go into the public galleries, but we do not screen people who go into the members' galleries.

When the House is in session, the OPP have specific places that they have to be under the Speaker's security guidelines. They are in the east public gallery: remember they're in plain clothes. They're in the west members' gallery. They're in the main entrance to the chamber and the main lobby at the entrance to the main building. It should be noted there too that with the OPP members those positions can change depending on what the situation is.

You're going to be getting a full tour tomorrow, I understand, but I just want to go over the highlights of the communications centre that's located here as well. Again that's part of the Speaker's security guidelines. We'll go over the technology and what's in there tomorrow, but basically the responsibilities are for telephone inquiries from the public and government staff. They have telephone inquiries on the in-house phone system. Those are the white phones you see that you just pick up and you get right to our control room. They dispatch the OGPS members or the OPP members to the occurrences that take place in the building and they monitor the video surveillance and duress monitoring systems. Also, they operate the CPIC, which is the Canadian Police Information Centre. There's a terminal located in that office.

I just want to go over some general rules. These are right from the Speaker's security guidelines, just to give you an idea.

Access to the Legislative Building: Entrance is not generally restricted. However, under the Speaker's security guidelines members of the Legislative Security Service are authorized to refuse entry to any individual or group that intends to demonstrate inside the building. This has been in the Speaker's security guidelines for upwards of 20 years.

The members of the Legislative Security Service also act as agents for the Speaker under the Trespass to Property Act, which gives us the ability to charge and remove people if we deem that necessary.

The demonstrations and crowd control situations: "The Legislative Security Service manager," which is myself, "is responsible for the response." That comes directly from the memorandum of understanding signed between the two agencies, as the Speaker outlined.

"At a special event or situation"—and that could be an opening of the Legislature or a major demonstration—"if there's an increased level of security, it should be provided jointly by the OPP and the OGPS.... A security plan shall be prepared by the ministry," which is myself, "and provided to the assembly prior to the event or situation."

In our particular case what happens, depending on what the event is, I prepare a plan. I submit it to the Sergeant at Arms for approval from the Speaker to tell him exactly what we're planning on doing based on the

information that we've received. That's standard policy that comes right from the memorandum of understanding.

Just to give you an idea of what we do here or why we do have security, these are just some of the things that we had in 1995. I'll give you a few minutes to go down the list there and read them and then I'll go to the next one.

You see that "0" up there. These are based on the categories we have from different years, so sometimes we have things and sometimes we don't. Demonstrations were down a little bit last year compared to normal, for the simple reason that the House didn't sit as often.

"Persons for observation" are just people who have come into the building who have caused us problems in the past that we just keep an eye on.

Those are pretty basic. The last one, which is a big one, is the amount of doors and insecurities that we find in the building that the OGPS do mostly after hours on their security patrols.

That's it.

The Chair: Thank you very much, Mr Hough, for the presentation. I now turn to the government caucus.

0950

Mr R. Gary Stewart (Peterborough): I want to go back to a couple of comments that were made at the start, before we saw the show, and one was a comment made that we should be very careful. I'm the new guy on the block, but I don't believe what we've seen in the last few months are demonstrations; they are becoming mobs.

I suggest to people who are thinking that we must preserve democracy, and certainly I'm one who probably believes as much about democracy and in democracy as anybody, but somebody's going to get killed and it's going to be an innocent bystander. It's not going to be somebody who's been aggravated by the people who are spotted in these crowds to agitate these people, but some innocent person.

A perfect example of it was last fall the time that we were evacuated. I happened to see a lady that we ran into an office and got her a secretarial chair because the lady was having an angina attack because she was so damned scared running through the tunnel there and she was popping nitro. That's the type of thing that's going to happen. I hope I'm not here and we're sitting around this room and in this committee and we'll all be saying: "Jeez, it's too bad that person was killed. It's too bad that person died."

I think what we should be doing is solving this thing in the bud and I think we'd better do it fairly quickly. It's nice to have all of the rhetoric that we're hearing, but this is not democracy; this is anarchy. When somebody comes and starts defacing this building, throwing graffiti on it, doing what they did yesterday, doing what they did over the last three months, I've a real bit of difficulty with that, and I can tell you, it'll get worse because of the agitation that's going on by certain groups.

They've got nothing to lose, and you could see that yesterday in there. One of the members—and I know the member opposite said he doesn't believe in that and I believe he doesn't, but what you could see was happening in there was one or two people got up in that House and started yelling and hooting and hollering and those people got worse. Those people are going to get to a point where

they are not under control, they are not responsible, and something's gonna happen.

If that's what you want—I'm not very worried about me being shot or killed. That doesn't bother me too much because that's the nature of the beast. But I'll tell you, if I have a guest here or somebody else here who does, an innocent bystander, I have a real bit of difficulty with that. That's not a question, Mr Chairman, that's a statement, and I want to have it on the record that I said that.

The one thing that concerns me is where I see that there's a possibility of going to Quebec and to Ottawa. I understand that this committee was taken there a year ago to have a look at it. I understand possibly prior to that they did. I look at the cost factor of this thing: going down, looking at the security and coming back and not making any response or not making any proposals about it, unless we did not get some of these proposals that we have done.

I suggest to you, if we're going to go down, 15 or 18 or 20 people, to look at that, with the cost factor to this province either we'd better forget it or we'd better do something about it. I suggest to you that for a quarter of the expense we could have a few people coming up here and talking to us, where we could sit down and have a real conversation with them and some recommendations rather than spending \$20,000 or \$30,000 or \$40,000 to go down and have a look at it.

I will vote against going down, but I will not vote against having people up here. Certainly the OPP officer and the Speaker and Tom, I think, must have access to these people who have set up that security. Surely to goodness, we can bring them up here at a whole lot less expense for this province.

The Chair: Mr Speaker, did you wish to respond to those comments at this time?

Hon Mr McLean: Yes, just briefly. I think if it's only the subcommittee, it's important that they see actually what they're doing. I think it's important the way Ottawa has changed where they allow the speakers and the way they have it across the driveway from the front of the building. I think it's got to be seen to realize the difference. They tell me that Quebec City is very, very stringent, and I don't think just coming up and explaining it, but I would think at least the subcommittee should go and have a look at it.

Mr Dave Boushy (Sarnia): Just one comment and one question. If there was to be minor disturbance in the east and west public galleries, to the Speaker, why should we discontinue the vote? Why don't we just carry on? I agree with Mr Cooke on that point. We could have carried on yesterday without any problem.

Hon Mr McLean: I can tell you why I stopped the vote was because I couldn't hear the names that were being called out. The table assistant who was calling the names out looked at me and I think I got the impression from him that we should stop it when we got to the end of that row. That was the reason it was done. It was so noisy that I didn't know who he was calling. That was the reason.

Mr Boushy: The second question I have, why do we have so many entrances to the building? Can anybody tell me?

Hon Mr McLean: That's the way the building was built.

Mr Boushy: Can't we just close a couple of them?

Hon Mr McLean: That's what this meeting is about and that's what this committee is looking at, access to the building, and that should be part of your discussion.

Mr Ron Johnson (Brantford): I have to say that a lot of what Mr Cooke said earlier I completely agree with, in particular with respect to him not getting the kind of information that he and his staff had requested in terms of the incident that he experienced. That I find very bothersome. I think that the Speaker and security here at Queen's Park have to be vigilant in addressing the concerns of members with respect to security.

But I think where we part company is with respect to the public galleries. I'm a firm believer that this is a public place, that this is a public building and should be open-access to the public. But at the same time there are rules to be followed, and when people break those rules, they do have to be escorted out. I watched—

Mr Cooke: I didn't say to keep them in.

Mr Ron Johnson: When I watched last night with interest as people were being escorted, I didn't see the security officers in any way act as I would consider to be inappropriate. In fact the people who were physically escorted out were those who were simply resisting. All of the ones I had watched being escorted out were first asked to leave, and many of them did. The ones who did not were then just gently touched on the arm and asked to leave. When they refused to do that, when they continued to disrupt the Legislature, it was then that they were pulled out.

Just to come to the defence of the security personnel here at Queen's Park, I think they did a marvellous job in clearing out the galleries. Quite frankly, it wasn't a violent affair at all. At the very worst you had a few people dragged out, and I honestly think that they probably deserved to be dragged out because they didn't obey the rules and then they didn't obey the security personnel when asked to leave.

I agree with a lot of what Mr Cooke said. At the same time, though, I think that the security people here have a job to do and what I saw last night was in keeping with what I would consider adequate and professional behaviour.

The Chair: Any response? No? Mr Grimmatt is next.

Mr Bill Grimmatt (Muskoka-Georgian Bay): I have a couple of questions. One relates to the staff sergeant's presentation. I wonder if I can just get a very brief explanation of the chain of command. Who essentially gives the orders? Who gives the instructions? Does the OPP instruct the OGPS staff on how to carry out their duties? Are you in charge of the OGPS people?

Mr Hough: Yes.

Mr Grimmatt: Does that explain then why you have, for a small four-man complement, two administrative or staff people?

Mr Hough: That's correct.

Mr Grimmatt: So at any time, if we deal with an OGPS person, they are in fact answerable to you?

Mr Hough: That's correct.

Mr Grimmatt: All right. A question to the Speaker, if I could. In the five-page brief that you provided this morning, Mr Speaker, you recommend a permanent subcommittee on security be established. Would that be part of this committee?

Hon Mr McLean: That would be my hope, yes.

Mr Grimmatt: Would it conduct its meetings in public?

Hon Mr McLean: Not necessarily.

Mr Grimmatt: Are we in public this morning, Mr Chair?

The Chair: Yes, at the present time, Mr Grimmatt.

Mr Grimmatt: All right. I have some concerns about the security around here generally, which I've expressed at previous committee meetings, in that I'm not really sure what the security arrangements are and I'm glad that we're getting a full briefing on that.

My concern about a subcommittee on security is that I wouldn't want it to get to be a private little club that other members or the public are not aware what they do. I think it's important that in a public building such as this the security arrangements be something that are discussed in as public a way as possible. I do think security is a matter that the members should have on their minds frequently, but at the same time I'm not sure that delegating it to a few members is a good idea.

Hon Mr McLean: The reason I'm suggesting that is some of the problems we had last fall, when Mr Cooke and Mr Bradley and Mr Conway were raising the issues. I thought we might have a subcommittee that could meet with me to discuss those very issues as they happen to try to resolve some of those problems. That's why I'm recommending that we have a subcommittee that can meet immediately and discuss that issue.

1000

Mr Grimmatt: One further matter, Mr Chair. I want to echo the comments of Mr Stewart. We have quite a thorough binder here with a comparison of three other Canadian parliamentary situations. I suppose I could be convinced, but after reading this, I wonder what I would gain by going to Ottawa or Quebec that isn't in this document or that I couldn't obtain by asking people who've been on these trips or other members of the security force here. My comment would be that I certainly don't think it's worth the cost and I think we have the information now to make some decisions.

Mr O'Toole: Just a couple of questions directly to Mr Hough. Who initiated the November 1st 10-person entry committee, under what direction?

Mr Hough: It worked under the same direction as anything else would work here. It was a procedure put in place by my office; it was provided to the Sergeant at Arms for approval, and after approval was given, it was put into place.

Mr O'Toole: So that would be somehow reported up the ladder to the Speaker?

Mr Hough: That's right.

Mr O'Toole: So the Speaker would have some kind of approval authority there?

Mr Hough: Yes. It didn't change the security guidelines at all. In other words, we have to have an entry control unit under the security guidelines, and that's what

that is. All we did was make it a 10-person Monday-to-Friday operation who would know the people and know the system on a daily basis, who would respond to demonstrations and see the same people on a daily basis.

Mr O'Toole: If I may pursue a tad further, you mentioned in your presentation—which, by the way, was a very good presentation; it gave you a nice capsule overview, structurally anyway—that there were 17 refused entries in 1995. Could you give me a specific example on what grounds you'd have a refusal?

Mr Hough: I can give you a couple. I can give you one, for example, from yesterday. We have somebody who's on the front steps, who's been demonstrating, banging on the doors, wanting to get in. He comes in through another door and wants to get in and go to the public galleries. Under the Speaker's security guidelines, he's not allowed to do that, demonstrate inside the building, so he's refused entry.

Another example I can give you is where we have people who are refused entry by letter. In other words, they have continually harassed staff in this building. They call us, and we issue them a letter to say that if they want to come to this building, they have to have a letter from that office or from some person in writing saying they can come to the building. If not, they're not allowed. In other words, the denied entry or the refused entry is based on the set of circumstances.

Mr O'Toole: What I'm speaking of at the moment, with your indulgence, is the balance we're always referring to. For your own safety and for our own safety, in terms of who controls what, there has to be a reassurance from me, in balance, that the Speaker, outside of the security force, has to be either involved or part of the decision-making process. If I push that down, personally I agree with many of the comments that have been made. The opening of the Legislature on the 27th and the presence of force in whatever form that was—I gather from your presentation that you make the decision to call in the dogs or whatever.

Mr Hough: No, that's not—

Mr O'Toole: Who does that?

Mr Hough: It's exactly like it says in the presentation. It's a part of the memorandum of understanding. Every special event or plan has to be put through the Sergeant at Arms before anybody or anything is brought into this building. We do not do any of those decisions—

Mr O'Toole: I'll ask the same question again. Technically, at the end of the day, the government, whoever happens to be in the position we are in at this time, is accountable to the people, and I'm sure you understand that. If it appears that there are decisions that embarrass the government, the government is responsible. In that respect, is there a chain of command such that either you or Tom ultimately has to have approval from the Speaker, and is that the case for that particular time? Was the Speaker completely aware of what the contingency plans were, or anyone outside of the Ontario Provincial Police?

Mr Hough: Yes.

Mr O'Toole: So there were. There is a process so that there's some vetting?

Mr Hough: Yes.

Mr O'Toole: That's good, because ultimately, at the end of the day, the Speaker and indeed the government are going to be looked upon as being restrictive or restraining. I think I've established my need to know the protocol there.

There's another thing I'm really having difficulty with, and I think Mr Cooke has raised this, however emotively. The whole definition of "demonstration" to me is central to what we're talking about. Demonstrations both externally and internally are two different things, and I think there should be contingency plans that address externals—in fact, demonstrations can be just that: they can be lying down, like Mahatma Gandhi. That's a demonstration.

The members here need to have a definition. If there are no demonstrations internally and that's one of the reasons for refusing admission, we need to have a real good handle on what the word "demonstration" means. It could be indeed putting up a child's poster, a day care poster. It could be any tacit act, lying down, quietly protesting the death of democracy, if you will. How would you respond to a demonstration of a passive nature? What would your normal standing orders now allow you to do?

Mr Hough: The bottom line is that demonstrations, under the Speaker's security guidelines, are not allowed inside the building.

Mr O'Toole: So on that particular day, Mr Cooke's incident was clearly out of order.

Mr Hough: That's correct.

Mr O'Toole: Good. And should be dealt with as such.

As a member, am I allowed to demonstrate? I'm a member and I'm up and I've got a placard like "Common Sense" or whatever—some of the ones I've seen recently. Is that not a demonstration and should they not be removed from the building? We could do the same thing; there are a few sayings I could hold up. But is that not a demonstration?

Mr Hough: Again, if I can just clarify, yes, that is a demonstration and—

Mr O'Toole: How would you deal with it? Remove them?

Mr Hough: If it's a member, we'd deal with it the same way we did. I went up and talked to Mr Cooke, and the Sergeant at Arms went up, and they dealt with it on their own.

Mr O'Toole: Let's move it a little closer: other specific incidents of a demonstrative nature, perhaps around Bill 26. There was a demonstration; it was not dealt with. How would you deal with it, and who? Is it you? Is it the internal? Is it the OPP? Who extricates the demonstrator? Who gets rid of the demonstrator?

Let's say, for lack of a description, there was an incident during the introduction of a bill, and that form of demonstration which we're talking of could take any form; it could be lying down, sitting down, refusing to allow process to occur. Who's responsible? Is it the Speaker? I'm trying to find out here how we fix existing standing orders. They already exist. "No demonstrations in the building." That's clearly in your book.

Mr Cooke: Where does the demonstration take place that you're talking about?

Mr O'Toole: At this particular time, I'm talking about a member provoking a demonstration. A demonstration could be refusing to participate, it could be lying down, it could be holding up a sign.

Mr Cooke: Are you talking about in the assembly?

Mr Hough: Are you talking about a member? If it's a member, the Sergeant at Arms deals with the members.

Mr O'Toole: Okay. So now we've got a little bit of a change there.

Mr Hough: No, it's always been the same. If I go back to Mr Cooke's putting the pictures up on the wall, that's exactly what we did in that particular situation: I called the Sergeant at Arms to come up and talk to Mr Cooke on that day.

1010

Mr O'Toole: In the particular case I'm talking about, if an occurrence of a demonstration happens within the legislative area, the Sergeant at Arms is required by his duties to do what? What is he required to do as part of his paid duties? Nothing or something? And what are the two options?

Mr Hough: Are you talking about what the Sergeant at Arms is required to do?

Mr O'Toole: A member in the Legislature is demonstrating and he's disrupting—

Hon Mr McLean: If he's in the chamber?

Mr O'Toole: Yes.

Hon Mr McLean: Then that's my responsibility, to call him to order or—

Mr O'Toole: Okay, you order him out and then the Sergeant at Arms comes and—

Hon Mr McLean: That's right, and removes him. He asks him to leave. He can tell you better, but I don't think he's to touch him or I don't think he's to—

Mr O'Toole: I think right there we're central to the issue of defining "demonstration" internal to the building, external to the building, and specific actions that have to be taken. If I could ask the Sergeant at Arms, what recourse do you have if there was indeed some activity inside the legislative area?

Mr Stelling: Within the legislative chamber, I act under the direction of the Speaker. If the Speaker names a member and suggests or tells me that I am to remove him, I will go over to the member and ask the member to accompany me out of the chamber. I usually ask a number of times, until I confirm that a person is not going to go. When I confirm that they're not going to go, at that point I would report to the Speaker that in my opinion, force was necessary. In the only incident that has happened in Ontario, I'm sure you're aware of what has happened.

The only other area that I can address in Canada was one that happened in BC a number of years ago, where a member refused to leave. He was not protected by fellow members, and the Sergeant plus some of the House staff picked up the member's chair and carried the member out.

In our case, it was not possible for me to get to the member who was named because of other situations.

Mr O'Toole: I appreciate your indulgence. I don't think we're going to get the answer to the big question here, particularly, but just one more little pursuit on this.

As a new member, I've been led to believe that there's a punitive action; I was led to believe by members within our own caucus that if the Sergeant at Arms touched you, you lost a sessional day's pay. No? There's nothing at all. What if I'm ordered out of the House?

Mr Stelling: If it's just a regular naming, then you're out for the day and you can come in the following day.

Mr O'Toole: But you don't lose any pay.

Mr Stelling: No, sir.

Mr O'Toole: Are there any circumstances where you lose pay?

Mr Stelling: Not that I'm aware of, sir.

Mr O'Toole: That might be a nice option too.

Hon Mr McLean: Some jurisdictions have that. Saskatchewan has a \$155-a-day penalty.

Mr Cooke: Mr Speaker, can we make it retroactive so that the Tory caucus member in third place, who wrote the book on a lot of this stuff, might be able to have it done to him?

Mr O'Toole: I think we're honestly trying to deal with a lot of the actual—

The Chair: Mr O'Toole, I'm hoping we can move to the Liberal caucus at this time. We have about another 45 minutes. It would be nice to have 15 minutes for each caucus to do another round. Thank you very much for your questions and comments.

Mr Morin I have first on the Liberal list.

Mr Morin: I'll be very short. We rely on experts to advise us; they have the knowhow, they have access to training. We ask them to make sure they bring in some security measures. I think there should be certain parameters, because at the end, the person responsible is the Speaker. I remember so vividly the incident in Quebec. The Speaker was on the spot; he was the one who was held responsible. If we don't do it, the Speaker has the right to do it; he'll impose it. But it can be done in such a way that it is not a control where we can no longer move. There's got to be some freedom. It is a democracy.

You talk about demonstration with a sign. A demonstration can be words in the House too. This is what democracy is all about: You have to voice your opinion, give a chance to the minority to voice their opinion. You're elected; you've got the power, for now. Tomorrow it's going to be somebody else. But democracy is to give the opportunity to the minority to voice their opinion with words—not with violence, with words. There's nothing wrong in that.

At the same time, we're dealing with a different population. There's no question about it. Forget about 20 years ago what Canada looked like. That's finished, that's ended. We've got to take the measures and we have to adjust ourselves accordingly. We have to rely on these people. I trust these people.

Of course, it is based on training. Why was it that a member was prevented from getting in? Perhaps because that individual was not trained properly. That is your responsibility, to make sure your security guards are well trained constantly, and if they don't do their job, get rid of them and get somebody else who will do the job. We have to respond to the Speaker. We have to make sure we can move properly, can move without any problems, without any incidents.

Crowd control—let me tell you, when you deal with a crowd, you deal with a beast, and there are certain measures that have to be taken. Perhaps if you have a chance, Mr Hough, with your experts, to explain: What is crowd control? What does it mean? What are the dangers? What measures do you have to take? Why, for instance, were there OPPs in the back close to University? I understand why they were there. It's training; it's security. If the front line doesn't work properly, you bring in the others to help them out. When you deal with a crowd, you deal with a beast. All they need is to be stirred and they get out of hand. All it takes is one bad incident, and we'll blame them and blame the Speaker.

But it can be done. Sure, you don't have to go to Quebec City, you don't have to go to Ottawa. You can bring in the experts. But at the same time, you've got to see for yourself. Maybe we don't have to go to Quebec, but at the same time we have to rely on these people. What is it we want? What can we do to prevent incidents? What measures should we take? The request there is very simple. There are incidents. There will be other incidents. We've got to be prepared to face those incidents.

There's no point, in my opinion, in debating this for too long. The perfect control, the perfect situation, the perfect setup will never exist. If I want to come in the House with a bomb, there are all kinds of artefacts that I can get today and I won't be detected. If my intention is to do something wrong, if it's to come in and kill someone, nobody can prevent me. At the same time, if you don't have any measures, if you don't have any control—I don't know, let's not make it complicated. There's a way to solve that. It's done everywhere. Go and take a look in the States. Go and take a look how they control the White House over there. There is a gate around it. You cannot go there. Why is that?

Mr Rick Bartolucci (Sudbury): I was one of those people who was denied access and I'd like some answers to a few questions. Let me carry you through the entire scenario so you'll be able to better answer the questions.

But let me tell you from the outset that I believe in security, I believe in law and order. I was a principal of a school for many years who taught that respect for authority and democracy was very important. I was a police commissioner who constantly sided with the police because I believe it's important that there be some order and some structure in society.

Let me carry you through the scenario of September 27. I got out of the taxi after visiting a sick person in a hospital to enter access to this building. I had my temporary identification. The Metro horsemen were guarding the side entrance. I showed them my identification and immediately one officer drew back his horse to allow me through and said, "Sir, go ahead." There were obviously a lot of people on the stairs, and I asked them: "Would you please excuse me. I'm a member. I'd like to get into the building." I had no problem at all with the crowd. When I got to the door—and I knew the doors would be locked, and I understand the reason—I put up my temporary identification. Clearly, being a new member, people would not know me, lots of the security

wouldn't know me. I left it there and I said, "May I come in?" "No." "Excuse me. I'm a member. May I come in?" "No."

I watched and listened with interest to your plan. Can your plan be so structured that it's flawed? I wasn't part of the demonstration, I didn't want to enter the building to be part of the demonstration, yet I was denied access to the building as a member. That happened to a minister without portfolio. It happened to Mr Conway. Why did it happen? There has to be an answer to why it happened. Was it a lack of training? Was it a bad judgement call? Was it an overreaction? I'd really like to know and I think all three parties would like to know. What is the answer?

Mr Stelling: May I respond to that? There were a number of incidents or events that took place on that day, and we'd love to share them with you, but because of the difficulties in that report we received from security of the events that day we think it should be something that's done in camera and we think it should be probably done with a subcommittee of this committee. That would be for this committee to decide, but definitely in camera.

1020

Mr Bartolucci: So what you're saying then, through you, Mr Chair—and I will respect your decision—what you're saying then is that publicly we will never, ever know why three members of the Legislative Assembly were denied access to enter the building. Is that what you're saying?

Mr Stelling: Well, a decision was made that day, by me—and I think this can go on the record—by me, at a certain part of the time during that demonstration where I gave orders to lock the doors to this building. The decision that was made was made on advice from the experts in the field of what was happening around the building and that decision was made with the best of intentions. Unfortunately, three people were denied access and I apologize for that.

I think when you understand, when given the information of the day's events and what was happening at individual doors, you will see the reason for it. But it's the type of information that I think should be discussed in camera.

Mr Bartolucci: I didn't receive an answer to both questions now, but I'll even accept that. Let me ask a third question—because there are all kinds of rumours floating around with regard to security, with regard to security being contracted out because of decisions that were either poor or weren't made—is there any truth to the rumour that the security around this building may be contracted out to the 51st division?

Hon Mr McLean: There's been no plans for that at all, and that's going to be up to this committee, how we handle it.

Mr Bartolucci: So in fact, anything—

Hon Mr McLean: The Sergeant at Arms would like to respond to this.

Mr Stelling: Parliamentary security is probably one of the most difficult types of security that exists. It's easy to go in to a building like the Bank of Canada or IBM and provide security to them. It's straightforward, it's clear

cut, you know what the job is and you put the devices in and you put the program together and it's a breeze. Anybody can do it.

Coming into parliaments, the whole game changes totally. One of the difficulties we had when the OPP and the OGPS first came to provide security for us is that they did it in the way that they would do it for the Bank of Canada or any other building, and it just doesn't work. So to have any outside security force come in to provide security in a parliamentary environment is asking to kill yourselves. You'd be put on the hot seat every day.

What you need is an inside group who knows what you need, can do it the way you want it to be done, and does it effectively. Personally, we've come a long way in the last 20 years and we're approaching a position now where we're almost there. We need some help from the members and we need some direction from the members of this House. Once we get that, I think you'll be very happy with your security program.

What Mr Cooke has said today has to be considered and what members of the government side have said has to be considered, but it has to be something that collectively you decide on. Security's arms are tied somewhat now. They can only go so far and they can't go any further because they don't feel they have the authority from you to do that.

If you're looking at outside policing, in my estimation, you're asking to ruin this Parliament. So you have to go with the people you have and you have to have input from the members and the Speaker and that's the only way it's going to work.

Mr Bartolucci: I'm happy you're saying that because I believe we should have our own security force here. I don't believe in contracting out, but I asked the question because it's obviously been a rumour that's floated about and I'm happy to hear you report that's not being considered.

I'd like to get back to my problem because it still is a problem for me, and it still is a problem for the House leaders. Will we ever have an answer to the dilemma of the three who were denied access to the building?

Hon Mr McLean: Yes, I would hope we would have an answer because I think there were some mistakes made and I think the way those mistakes were made—the Sergeant at Arms wants it indicated that he would like to tell you in camera.

The Chair: Are there any further questions from the Liberal caucus? I've got about five minutes left for each of you. Mr Cooke for the New Democrats.

Mr Cooke: I don't have a lot of additional questions. I appreciate what the Speaker just said. With all due respect, Tom, it would just be okay for you to say that yes, a mistake was made; we need to know the details of how that mistake was made. I don't think we're going to find any special report that is going to come to any other conclusion than to say that at the end of the day there were all these contributing factors but a mistake was made, because at another door, at the same time that people were being not allowed in, Frances Lankin and I were allowed in. There was bad judgement that was used by some folks on that particular day. Everybody can understand what went on that day, that there were a lot

of people under a lot of pressure, and no one is going to be saying that the human beings who were involved were somehow trying to sabotage Parliament. We know that's not the case. There was a mistake made, and a mistake made because there were hundreds of people around the building and people were frightened to death that if they opened up the door somehow some people might get in who actually might harm somebody. Probably some of the mistakes that were made were made for the right reasons but, none the less, they were mistakes.

I certainly do appreciate the fact that we're going to have an opportunity to look at that report in camera and then I would hope that—I want to look at the report, but I certainly reserve the right that we discuss whether or not the report should be made public, because I don't believe reports like that should generally be kept secret. If there are particular things in it that can't be made public, then we release as much of it as we possibly can without putting anything at risk.

I do want to go back to one incident. I don't believe it's a big deal but I think it demonstrates a little bit about the judgement that I'm concerned about. I don't know who wants to answer the question, the Sergeant at Arms or a representative from the OPP. When we had this children's petition, it was not a demonstration. You can call it a demonstration. It was putting a children's petition up on a wall that obviously violated building policy. Quite frankly, I didn't know that it violated building policy, I really didn't. Maybe you, in your short period of time here, have had a chance to study every policy that exists. I haven't, nor will I. So when Tom came up and told me that this was inappropriate, that's fine. It eventually was brought down. I still don't understand, though, why there was a plainclothes OPP there taking pictures. I really don't understand that.

Mr Stelling: Maybe I can help you out on that one. Although members of the House were involved, there were other people involved in that demonstration who were not recognizable to security. Security do—

Mr Cooke: Let me—

Mr Stelling: If you don't let me finish—

Mr Cooke: No, no. Let's have a dialogue about this because—

Mr Stelling: May I try and answer the question?

Mr Cooke: All right, go ahead.

Mr Stelling: Security are not familiar with all of the employees who work in this building. On a regular occasion when demonstrations take place, if they're taking place within the building security often takes pictures of people in demonstrations. On this occasion, when I went up there, indeed, one of our officers was taking pictures. He was not trying to take pictures of the members, he was trying to take pictures of the people who were—

Mr Cooke: I jumped in a couple of the pictures. No, I'm just kidding.

1030

Mr Stelling: When I went up there, I asked him to stop because I knew the participants in the demonstration. I knew who the people were. I recognized them as members of the House and also members of your staff. I think after our conversation, we agreed that you would

remove the banners and take them off the floor, and you did that in a matter of minutes. I asked the officer to put the camera away, which he did. We do it on a regular basis if it's somebody we do not know. He did not know the participants other than the members and that's why they take pictures.

Mr Cooke: Let me just make a practical suggestion then, to you and to the OPP. There were five people there who were not members, so we're not talking about a huge demonstration. There were five people. I've been a member now for nearly 19 years. All the representative from the OPP had to do was come up to me and say, "Who are those five people?" and I would have told them that they were legislative staff, instead of standing there with a camera as if we're, quite frankly, in some police state. Just some common sense is all I'm asking and that's all that needed to be done.

The officer knows who I am. I've talked to him many times. I know who he is. All he had to do was come and say, "Who are these five people?" They looked pretty much like they were staff people. They all had their ID badges around their necks and none of them had coats on or anything. They pretty much looked like they were around here, and even if they were subversives, there were only five of them and we would have been able to handle that.

All I'm saying is that this is a very minor incident. If you want us to have a level of trust in the process and the exercise of force, then on things like that I'd like to see a little more common sense, even though it's a term I don't like using any more.

The Chair: Thank you very much, Mr Cooke. Any comments? Turning now to the government caucus, I have Mr Stewart next.

Mr Stewart: Just a couple of questions. The special group of OGPS people, the 10, do they have access to firearms if there was a concern or a problem?

Mr Stelling: We have removed firearms from the OGPS for a number of years now. They used to receive regular training. The training was not at the same calibre as the OPP. We do have six OPP officers in the building who are armed. We also have people with the Premier who are armed. I shouldn't say "we," but the OPP have people with the Premier who are armed and people with the Lieutenant Governor who are armed.

We should also tell you, and you will see tomorrow, that we have some weapons within the security office in the basement which our OPP staff are able to use if needed. So there is sufficient armed force in the building if it is needed.

Mr Stewart: You know, when we get talking about this type of thing, unfortunately politics enter into it and I've a bit of difficulty with that. I heard you make the comment—either you or Mr Hough—I believe you don't have the authority to do certain things. I guess it's like going to a plumber to find out how to put up wallpaper. I believe the plumber knows a little bit about how to do plumbing, and I believe that you people, whether it be the OGPS or the OPP, should be allowed to do a proposal saying, "This is what we believe you should have for security in this building, both for yourselves and the public."

Have you people, your groups, ever presented a complete plan to the Legislature on how you feel it should be done and, if not, why not, and could you do that?

Mr Stelling: We were able with the last Speaker, Speaker Warner, to spend some time with him developing proposals. The Speaker at that point formed a committee made up of the Deputy Speaker and the Chairs from the House and they fleshed out the proposals that we made to them, modified them a little bit and this was the base for Speaker Warner's new security guidelines and new security programs from the last Parliament.

From a security point of view, we were quite happy with them because what it did was, it started to filter people for the first time. By filtering what I'm suggesting is not denying access to people but putting people in the right area where they want to go. If they want to go on a tour, they go on a tour. If they want to go to a committee, they go to a committee. If they want to go the House, they go to the House. If they want to see a member, they go see a member. That's what that proposal did, and from a security point of view, that was great for us.

Right now, we feel we're standing in the middle of a stampede during the summer when the bus tours get up. We have two people at the front door dealing with 400 or 500 people all at once. It's just overwhelming. So what we wanted to do was to filter the people coming into the building, and that's what Speaker Warner's program was all about.

Mr Stewart: My point is that it appears to me that it has been watered down to what either you want or the OPP wanted back, and I guess that's my concern. Are we watering it down for political reasons or not? I go back to what I said. I'm not so worried about me, but I'm worried about some little old lady who wants to come and see what goes on in this House—I don't know why she would with the conduct that we have, but some of them do—that she's going to have a heart attack or she's going to be hurt or whatever. That's what worries me.

I believe you people, whether it be you, Tom, or the OPP know what should be done and I think we've got to start taking some advice from these people.

My final comment is that I agree with what Mr Bartolucci said, and I don't know whether you want somebody to move that we go in camera, but I would so do, to get the reason for it.

Hon Mr McLean: I've a couple of things I'd like to put on the record just before you go in camera for the committee to consider.

I have a letter from Annamarie Castrilli's legislative assistant with regard to some of the problems that he has had with regard to the upper galleries of the House. As a staff person, he has a badge or he has a tag and for him to go up into the gallery or anywhere, he's got to go through the metal detector. The question he's asking is why should he, as a staff member, have to go through a metal detector when he's already got a badge on. I leave that with the committee to deal with.

The other issue I would like to bring to the attention of the committee, I've had some requests from some of the members that they would like their spouses to have identification. I've talked to the Sergeant at Arms and I

recommend that that happens, and I just wanted to bring that to your attention, because the security is tighter. I know my wife has even been stopped and asked, as have others, and if they had the identification, it would be more appropriate for them to be able to move freely.

Those are just a couple of the things, and the other thing that I have too is with regard to the confidential report. I read it and read it and I don't really see anything wrong with making copies for the members so they know what's in that report.

The Chair: Mr Stewart has moved that we move in camera at this time, I believe I heard him say. That means members of the committee and legislative staff are the only ones to be in here. I believe Hansard is to leave as well.

Mr David Christopherson (Hamilton Centre): Just a clarification: We're going in camera for the purposes of discussing that report solely?

The Chair: Mr Stewart, could you repeat it again?

Mr Stewart: I made a comment that they didn't wish to answer Mr Bartolucci's concern and I know it's been a concern on both sides of the House of what went on. They've said they would like to do it in camera, and I believe they should, because you can't tell the world everything about security. Otherwise, it's not secure any more.

The Chair: Is there consensus among committee members that we do that at this time, or do we require a formal motion?

Mr Bartolucci: I would love to move in camera, but the Speaker also said that he would love to do it with the subcommittee only. Is that correct?

Hon Mr McLean: No.

Mr Bartolucci: No? Okay.

Hon Mr McLean: If it's only the subcommittee that will go to Quebec and Ottawa, that'll be fine.

Mr Cooke: I'm sorry I wasn't here for the entire conversation, but in terms of the report being dealt with by the committee in camera, I guess I would feel more comfortable if, in the first instance, the report was reviewed by a subcommittee, and that there was a recommendation on whether—I'm not one that agrees to reports being dealt with in private unless there's justification and the subcommittee can make that determination.

The Chair: Mr Stewart, do you wish to proceed?

Mr Stewart: No. I still move that we go in camera. I don't believe little pockets should know things. We are a group. We are the government, both sides, I think, we should find out because it could happen to me tomorrow and I would like to know why.

Mr Cooke: I'm sorry, just to make it clear, the only thing the subcommittee would determine would be when the whole committee sees the report, whether it's a public meeting or whether it's an in camera meeting. It will always come to the full committee.

Interjection: That's right. We'll still get it.

1040

Mr Stewart: Well, I stick with my motion.

The Chair: Is there any further discussion, first of all? Mr Stewart has moved that we move into camera at this time. All in favour of Mr Stewart's motion, could you

please raise your hands so that we can see here. Members opposed? The motion is defeated.

Mr Ron Johnson: Can I make another motion? I move that this report be referred to the subcommittee, where it will be determined at that point whether or not the report, when considered by this committee, will be either public or in camera.

The Chair: Any discussion to Mr Johnson's motion? Consensus? Okay.

I still have Mr Froese down to make some comments.

Mr Tom Froese (St Catharines-Brock): I'll keep it short. I guess I have a problem with the process of what has happened here. I understand that we're probably talking about, in the final analysis, the level of security. From those who are providing the security, I understand the difficulty. There's an old saying, "You're damned if you do and damned if you don't." That is so true in security. I can understand your position. No matter what you do, if somebody wants to use it for their own—and these certainly are my comments—political purposes, they're going to use it. So it's got to be a very difficult situation when you're dealing with delicate situations. Run-of-the-mill security, if there is any, I guess, is not that complicated.

What I have a problem with, now that we're getting some of the answers to some of the questions and concerns that were put forward before—in my mind the answers to some of the concerns are fairly straightforward, fairly easy. This could have been dealt with shortly after the concerns were expressed. We've waited four months now to hear this, and then the whole issue is, "Is this in secrecy?" and all that, and it's really not. We're finding that there are legitimate concerns that were made and legitimate answers, and they're straightforward.

I would have loved this to be dealt with the day after the concerns were brought forward, because now we've had four months and we've spent all this time talking about a security issue when it was really no big deal. If I was a member who was not allowed into the building, yes, I'd have the same concerns. So we found out that there's another entrance that was opened up. Those concerns about coming in the one door, if we knew that the other door was open, wouldn't be a big issue that's been built up now over some time when, relatively, this could have been solved fairly quickly.

I'd like to see more of that. If there's an issue, if there's a concern of security on a specific situation, I think it should be dealt with right away, immediately, because we all realize that people in responsible positions make the decisions. The bottom line on some of this stuff is just, "I made the decision to do this for this and this and this reason," and you have to accept it. I think if this had been done, we probably wouldn't have spent all this time in the last two hours discussing the whole situation.

There is one question, though. When additional security staff is required, what's the process? When we go outside, do we go to the OPP, do we go to the city of Toronto? How does that work? What are the mechanics? What's the process? I'd like to know that.

Mr Hough: Under the memorandum of understanding, we, which is myself, have the opportunity to contact other agencies as we see fit. Again, we look at the

situation, and it's all part of the plan that's presented to the Sergeant at Arms, to the Speaker, that "This is what we recommend based on the set of circumstances," be it a demonstration or a special opening, and that's it. So it's a combination, joint forces with OPP, Metro, depending on what it is.

Mr Carl DeFaria (Mississauga East): I just have a question on the incident that Mr Cooke indicated. Why wasn't that courtesy extended to Mr Cooke? If there was a member there with four or five people doing something that is against the rules but it's non-threatening, why wasn't that courtesy extended to him, someone telling him: "It's not allowed. Will you indicate to the people to stop doing it." Because it's quite embarrassing to a member to have the OPP coming and taking pictures without talking to the member and assisting the member.

Mr Stelling: It is our belief that that courtesy was expressed.

Mr DeFaria: So that courtesy was extended to him before the pictures were taken?

Mr Stelling: As the "demonstration" was happening, we believe that Mr Cooke was informed that it was not appropriate. I don't think Mr Cooke agreed with that, but—

Mr Cooke: It's a different issue with the picture-taking.

Mr Stelling: No, I think what he's asking is if somebody told you that you couldn't do that, and I think somebody from security told you that you couldn't do that.

Mr Cooke: You came and told me. That's not the question. The question is about pictures being taken by a plainclothes OPP officer.

Mr Stelling: This is another issue over here.

Mr DeFaria: The question is, before the pictures were taken, whether the courtesy was extended to you by informing you that this was not allowed, and then a certain period expired before somebody attended and started taking pictures.

Mr Ron Johnson: We seem to be going in circles over this incident with Mr Cooke. I guess what I'd simply want to say is that we've in some respects addressed the report. Can we request, through motion, from the Speaker or Sergeant at Arms two things: number one, a report of the security incident that Mr Cooke was involved with and that a report be submitted to this committee, along with the guidelines that security officers, OPP, use with respect to the photo-taking? Can we get something like that? Can this committee request that through motion?

The Chair: You can move a motion of that nature if you choose to do so, Mr Johnson.

Mr Ron Johnson: So moved.

The Chair: Could you repeat that?

Mr Ron Johnson: I would like to move that this committee receive a report from security officials with respect to the incident that Mr Cooke was involved in, accompanied with the guidelines that security officials use with respect to taking photos of security matters.

The Chair: Is there any discussion on Mr Johnson's motion?

Mr Cooke: Mr Chair, first of all, I hope we're not going to proceed in a way that we need a motion for

every request for information. Normally, a member of the committee can say: "We need this information. Could we get it?" Unless somebody objects, you just go ahead, and I think that's how we should proceed on this. Could we get the pictures, too?

The Chair: If you wish.

Mr Ron Johnson: My concern is that those requests have already been made and we haven't got them yet. You've made those requests already, from my understanding, on a number of occasions. You've still yet to receive the report. So what I'm saying is that maybe it does take in this case a motion to get that report.

Mr Cooke: Yes. I just think the way that committees have normally operated—it has the same force of the motion because we all agree. I would argue, though, that whatever reports you get will not be a report of the incident, because there hasn't been an investigation. None of the staff who were involved and none of the MPPs who were involved and none of the members of the press gallery who were involved have been contacted by the Speaker's office in order to put together an investigation of what happened.

Mr Ron Johnson: This motion would force them to do that.

Mr Cooke: That would be great.

The Chair: Any further discussion on Mr Johnson's motion?

Mr Froese: I'm not interested in the report. It can be dealt with with Mr Cooke and the Speaker and the security. As far as I'm concerned, it's an isolated incident and they'll deal with it on a one-on-one basis, and so I will vote against it.

Mr Stelling: Mr Chair, let me just answer what we have on that incident. We may have one paragraph in the incident book, and we're not even sure that we have the film. We may have got rid of it.

Mr Cooke: I was being facetious about the pictures, Tom.

The Chair: All in favour of Mr Johnson's motion will raise their hand, please. All opposed? The motion is carried.

Mr Bartolucci: On a point of clarification, Mr Chair: I appreciated and supported Mr Johnson's motion because I understood the intent behind it, but I also respect what Mr Cooke said. This committee will not be operating by motion, but by simple request for reports, correct?

The Chair: I should think that would be sufficient in most cases, Mr Bartolucci, as well as trying to achieve consensus on most issues, if we can do that.

At this time, since I see no further urgent questions, I would recess the committee for five minutes. We'd like to come back at 11 o'clock sharp and deal with at least three additional issues: the issue of travel, we have an agenda item, and there's been a request for some discussion on how we're going to get the public involved in our discussions. So the committee stands in recess until 11 o'clock.

The committee recessed from 1051 to 1101.

The Chair: It being past 11 of the clock, the committee resumes its sitting. The first item I'd like to deal with

as Chair is the issue of travel and just perhaps give my recollection of what the subcommittee's discussion was.

We had a conference call shortly after new year to discuss this issue. The subcommittee, being the Chair and a representative of each of the parties, discussed how travel would be handled. Of course, we have a request from the Speaker to have the standing committee on the Legislative Assembly or a subcommittee of that committee travel to Ottawa and Quebec to look at their security arrangements and report back what our findings are in the context of our discussions here as to what we should be doing.

The subcommittee I think looked favourably upon that request but we didn't come to a conclusion, I guess it's fair to say, as to what exactly should happen. The Chair put forward the notion that due to the cost of the travel, a good compromise might be to have the subcommittee travel, along with the clerk of this committee and one researcher to assist in a staff capacity. We would only stay for one day at most in both of the destinations, Quebec City and Ottawa. There was some discussion about that.

The cost is a consideration as far as I'm concerned as Chair. It's approximately \$1,000 per person who would be travelling if you include airfare and hotel bills. Conceivably, we could have up to 18 people travelling, if the whole committee went. If just the subcommittee went, I guess this committee would be charged the equivalent of approximately \$6,000 to its budget—again the Chair, members of each caucus, the clerk and the researcher. The Speaker of the House of course has indicated his interest and intention to travel. His travel costs would be incurred within his own budget, as would the Clerk of the House.

That's to the best of my recollection what we discussed in our subcommittee conference call. I know a couple of members have indicated an interest in speaking to this issue and I would open the floor now to discussion, starting with the Liberal caucus.

Mr Bartolucci: I'll support the Speaker's recommendation. Although I appreciate the concerns across the way, I think it is very important that the subcommittee see at first hand and can bring us back firsthand information. I believe it is very, very valuable to see security in other institutions and to see it at first hand. The cost is not prohibitive if in fact only the subcommittee goes when you think of what the returns could be for this Legislative Assembly and for the people who work and govern in it. So I will be supporting the recommendation that only the subcommittee travel to the two destinations.

The Chair: Mr Morin, do you have a comment on that?

Mr Morin: Yes. Somebody raised the issue a minute ago that we had been there last year. I think it was about five years ago we were there, and then the whole committee was there. It's so important that we send someone to go and take a look. Witnesses will never express as clearly what the situation is at their location, better than what you would see yourself, and we rely totally on those people who will go there. I was there five years ago. I've seen it and I would prefer to send somebody who hasn't

been there. Mr Chairman, I think if Frank could go on my behalf it would be great.

If any one of you wants to go, this is not a perk. You're spending money for one purpose: to make this building more secure. So any newspaperman who comes along and criticizes us for having gone to Quebec City because we want to make sure that we establish a good system, let me tell you I could defend that any time. So even if there are five of you going, I don't care. I think it's a necessity that you go and see for yourselves so that you all come back enriched with some ideas, new ideas, so that we can come out with a good setup here. Again, that's not a perk; that's a necessity.

The Chair: Mr Morin I guess is the only member of this committee who was—

Mr Morin: That's right, and Frank I think should go on my behalf.

The Chair: Mr Cooke, did you have something to add to this point?

Mr Cooke: Yes. I will support the motion or the suggestion from the subcommittee for a couple of reasons: One, I actually think if we're going to limit it to the subcommittee, it's probably going to be less expensive to send the subcommittee than it will be to bring officials from Quebec City and Ottawa, because we're only talking, as you said, one from each caucus and one staff.

The Chair: Two staff.

Mr Cooke: Two staff. So five people altogether. I do not believe that there will be any criticism at all about it. It's already been reported that the committee's going to be travelling to Quebec and to Ottawa.

But more important than any of that, the Speaker has referred this matter to the committee and the Speaker has made a request that the committee go, even if it's only the subcommittee. Since this issue is being taken very seriously by the Speaker, I think we have an obligation to support the Speaker's request. It's not a hugely expensive request. The budget for the committees that the Board of Internal Economy has granted for this particular fiscal year, I would suspect that we're hundreds of thousands of dollars under budget because of the election. So it's well within budget. But more important, I think if you turn down the Speaker's first request of this committee, on the first major issue that he refers to this committee, I think that undermines the Speaker's role in the Legislature.

Mr John Hastings (Etobicoke-Rexdale): I would support the general idea that we have a subcommittee go. We're in a new era of some economic restraint. I can place some reliance and trust on those members who are part of the subcommittee—and I'm not—to go. I'm not sure, but I don't see any necessity for myself to go personally. We have to do it in an economic way and I think a member from each caucus, the Chairman and two staff will be more than appropriate. I would move a motion to that effect, and to bring back any relevant material, videotape or anything that would help those of us who weren't there to give us a better sense of the situation.

The Chair: If the committee would allow me to comment, I guess one of the reasons that we're talking

about travelling is the fact that there is no record of the previous visits in a formal sense. I think it would be helpful if at this time the staff would be there.

Mr Hastings: I'll move that whereas this committee has not travelled to those two particular centres in the past, or at all, this makes the trip an essential necessity and justifiable in that context.

Mr Ron Johnson: The only concern I have—and oddly enough, for the first time in a while it's not about the dollars, because I think it is a valuable trip—is that the Speaker, as well as recommending this trip, has also suggested that we set up a committee for security. My only recommendation would be that it is that committee, if we do strike one, that goes on this trip. If we intend on establishing a small committee that will strictly deal with the security issue, then I would recommend that that is the committee that should go and not the subcommittee.

How you want to deal with that from the committee point of view now, I don't know, whether you want to establish that committee first and then send them or whether you want to send the subcommittee. There's no point in sending the subcommittee if members of that subcommittee have already been down there.

The Chair: The motion could read "a subcommittee of the committee," to allow various caucuses to sub in whoever they want on the subcommittee. I think that would satisfy your concern. Mr Froese, you had a comment?

Mr Froese: I'm trying to find out what the reason is to go. Is it to see other jurisdictions and what their security is and then report back? Do we have any information why these other committees that went didn't report back? I suppose we don't, but for the sake of going to find out what type of security other jurisdictions have, is the subcommittee going to come back with reams of paper that we have to read over and that's their report? Because how can you get in a nutshell—the committee members, the subcommittee or whoever goes get a feeling and they see at first hand. How are they going to communicate that to the committee?

Over the years, as we've heard already, we have developed our security situation here and I would assume we've got the best knowledge of a made-in-Ontario situation. Quebec already, we heard, is more secure, more strict, whatever. The House of Commons is also probably a lot more stringent on security than we are. I guess I have a problem with even going.

1110

The Chair: The Speaker's rationale, probably, for picking Ottawa and Quebec would be the following: Quebec I think has the highest standard of security of any legislative building in Canada, resulting from the incident that was discussed earlier in 1984. Ottawa has a slightly higher standard, I understand, than ours, but it's reasonably close to us geographically and in many ways they share the same issues that we have.

Mr Froese: Security is very important, there's no doubt about it, and I don't want to be misinterpreted that I don't think it is. The problem is, are we looking to secure this building more than we've got it now, and then if we do that, are we going to have problems with whomever with respect to that?

The Chair: Yes, as I see it, I think we'd want, as a committee, to have a general overview of the existing security arrangements, comparing them perhaps to other jurisdictions and working with the Speaker. But I think the intent of the Speaker is in some ways to enhance the level of security for the building. I can't speak for him but I gather that's his general intent.

Mr Yeager would like to offer some brief comments to the committee at this time about the previous trip.

Mr Lewis Yeager: I can if the committee wishes me to. As has been alluded to several times, the full committee did travel in February 1991 to visit with Speaker Fraser at the House of Commons, and the deputy Sergeant at Arms who was in charge of security, Frank Leigh.

I took complete notes of the meetings there with the proviso that a printed report not be prepared and that the notes didn't leave my hands. That's the difficulty with discussing security measures, that you can't provide reports easily that last in time. I do have fairly substantial notes that you might want to have a briefing on. Whether you find that a good use of your time I don't know. But that perhaps should occur in camera, because we did make the commitment to Speaker Fraser at the time that this material, although it is now five years dated, should remain confidential. That's the only comment I have.

The Chair: Thank you, Mr Yeager. Further discussion?

Mr Froese: From Speaker Fraser, was it commented on that no report would be given or that it would be in camera? It is very interesting to hear what is happening. You've got notes. There was no report made. My concern is that, coming back from Ottawa or Quebec, could we be involved in the same thing in that we've got notes but no report?

Mr Yeager: You can make whatever arrangements are suitable at this time. This was the arrangement in 1991, that they were prepared to give the committee a very frank briefing but they didn't want the material to be circulated beyond the committee members. That's what we've maintained to this point.

Mr Froese: Were those notes submitted to the—all the committee went anyway.

Mr Yeager: All the committee members attended and there were not extensive committee discussions of security matters following that. This was handled by the Speaker and subcommittees and that sort of thing. There was never a very full discussion of what happened in Ottawa with that committee following our return. The issue never really came up until this committee has taken an interest in security again. The Speaker and the staff have handled security measures, and there's been a very extensive evolution both here and in Ottawa since 1991.

The Chair: Thank you, Mr Yeager.

Mr Hastings has moved a motion that a subcommittee of this committee travel to Ottawa and Quebec as per the schedule that's been prepared and all members have. All in favour of the motion, please raise their hands. Members opposed to the motion? The motion is carried.

Mr Froese: I don't know what the procedure is, but the motion did not—before the vote was taken I wanted to amend the motion or add to it that we do get a report

back from the subcommittee, or maybe that's understood, that the subcommittee just doesn't go and then we end up with the same thing that happened in 1991 and 1987.

The Chair: I agree with you very much, Mr Froese, and I'm sorry I didn't recognize you. The reason was that we were in the process of the voting, so I finished that. I think it is a given that the subcommittee must give a detailed report to the full committee, and it would be helpful to have at least some public record of what the findings are so that in the future we don't have to continue going every five years perhaps.

The next item we have to deal with that I'd like to raise is the concept of involving the public in these discussions. During the course of the conference call Mr Christopherson raised this issue, and I would perhaps turn to him to explain more fully what he wished to accomplish by this and what his plan is for public input.

Mr Christopherson: I was expressing a desire on the part of our caucus to have in some fashion public input into these discussions, given the fact that one of the concerns, among other important legitimate concerns that members have, that security has, the clerk, the Sergeant at Arms etc, but one of them is also a perception in the public that this building is becoming less and less accessible to them. That's a major departure from the mindset that's existed previously in Ontario. This has always been a building that people felt comfortable approaching, coming into, and now we're seeing letters to the editor; I'm hearing stories from concerned constituents in my riding. Others may have the same sort of thing.

The suggestion was made by I believe one of the government members in that discussion that the media represents the public interest, and oftentimes that's the case, but in this particular instance I don't believe that's applicable because the media, like us, work here and they have easy access, once they've got their badge on or they're known, and that's different from the role they play in reporting to the public what happens here. So I don't think that covers it off.

I'm open as to how we would do that. We can't exactly invite 11 million people to come in and give their opinions, nor can we ask them to hold a mini-election to elect a representative. So I'm flexible and I realize the limitations on it but I am concerned.

It was Mr Morin who made the point early in our discussions, and I agree with him, that as much as possible it's to the benefit of the work we do here on this issue if we can all agree. Unanimity of purpose and conclusion is important if there's to be buy-in, and I support that. I think that should also apply—it will for us—to the public perception of this process. If all we do is all the discussions behind closed doors are only people who are already sort of in the beltway, as they say in the States, then really the whole perception that this place is becoming a bunker is reinforced by the process that we've used to look at that whole issue.

I think we have a collective problem in making sure that there's a perception and a reality to the fact that the public in some way have input. We have some ideas and I'd be willing to dialogue with colleagues about that, but this is a really important part, as we see it in our party,

but I also think for all of us here working as non-partisan members, if you will—as much as that's possible, Ted—as much as we can, in setting the rules that we look at this as a non-partisan effort. This is an important one for us.

The Chair: Thank you, Mr Christopherson. Mr Johnson, did you have a comment?

Mr Ron Johnson: Yes, just to support the concept of having the public involved in this process. Like Mr Christopherson said, this is probably one of the very few issues that truly can be dealt with in a non-partisan way. The security of this building affects us all equally and affects the public as well. I think perception is important, that we are perceived as listening to the public—and that we do in fact listen to the public with respect to security and that this is an open Legislature.

I want to hear the ideas you have. Quite frankly, I don't have any, and maybe you can help us with that. I'm not sure how we can involve them, outside of going into a lengthy public hearing process. I don't know how we can do that, but I would like to hear the ideas.

1120

Mr Froese: I'd like to support that motion as well. I think it's extremely important that the public understand what security is required here, as well as what we need to get from them. It's a good dialogue, in my opinion, to ensure that the public understands what we're trying to achieve here with the security; that there's an understanding from their perspective of how they get access to the building, but also that there is security needed and how that all works.

Mr Cooke: I certainly appreciate the openness that members are showing towards this option. What have we got? Three weeks?

The Chair: We've been allocated three weeks by the House leaders.

Mr Cooke: I forget these things. It's the first thing that goes.

I would suggest that if a few days were aside where we could have some—call them public hearings, call them whatever you want. Obviously, we would not be able to advertise and open it up. Even if we had the whole three weeks, you wouldn't be able to do it that way, and we'd be talking about something much more limited than that.

I don't know whether the committee itself, to the clerk or to the Chair, has received letters about this particular committee and its purpose on security. I've received some letters. I believe the Speaker has received some letters. I assume other parties have as well. If the time lines were set, the subcommittee could take a look at it; you could review those that have expressed written requests already about being involved in the security issue, and look at what we have, and let's see the pool of names, and let the subcommittee make some decisions and set aside a few days to do that.

The Chair: I think it is a matter for the subcommittee; I agree, Mr Cooke. From the Chair's perspective, I've not received any mail on this issue and the clerk informs me that she has not. I think the Speaker has, though; you're quite correct.

Mr Cooke: I have a few as well.

The Chair: We could see your names as well. It would be a matter for the subcommittee.

Mr Miclash: I'm interested in knowing what groups, Mr Cooke. Who has expressed an interest?

Mr Cooke: The people who initially expressed an interest—and when I went to a subcommittee meeting I expressed this very clearly—are some of the folks who were involved in the demonstration on the day of the throne speech. I'm not suggesting that everybody be invited, but there were some who are well-known people in the province who expressed an interest in coming and talking with the committee.

Mr Miclash: I have no problem, Mr Chair.

Mr Bartolucci: I support the recommendation. I believe this is an important component of this whole process, so I'm fully supportive of it.

I'm wondering, is there a log-in at the main entrance? Those people who use this facility would be the ones best able to give us some insight into how security should be done or what they see. For example, if schools come in, they maybe would be a group we would want to take a sampling from, and if other groups come in and sign in. Is there any type of sign-in here?

The Chair: There's a record of school groups and tours that come in, I'm certain, through interparliamentary public relations.

Mr Bartolucci: Anything else? Just schools and tours?

The Chair: That's something we could check into.

Mr Bartolucci: We might want to take a sampling of them to come in and appear before us, what their experience has been, along with others.

Mr Morin: I'm a bit concerned about inviting the public to come and tell us how we should secure our building. I don't know how to express it, but it's just my gut feeling that we will ask all kinds of groups that will come here with different ideas and then—it's a bit like playing cards. Do you show your trump to people? Do you tell people, "Here's the way the building is secured"? That's my concern.

We should have different groups that have been here, yes, if we accept that. Are they concerned about the security? I have people who are concerned that we don't have enough security. Of course, if we were to listen to others, this place would be wide open and they would walk in and do all kinds of things. They would have to put that aside.

What kind of groups do you want to invite? Who is the public that you're planning to invite? Who are they?

The Chair: That would be a discussion for the subcommittee. That's perhaps the intent.

Mr Stewart: Just a comment to Mr Morin. I don't think we're going to talk to the people about the actual security and tell them about it. I think the idea of Mr Cooke and Mr Christopherson was that we should let the people have some input on maybe how much there should be, whatever. I could support that.

One thing I would like to bring up, though, is back when we had the first meeting a few months ago, I asked to have put on the agenda that protocol, conduct etc in the House be considered during the two or three weeks we are going to be sitting. I would like that to be pursued as well. If there was ever a time for that to be also

included with public input, it's now, because I'm getting a whole lot more phone calls and letters regarding our conduct in that House and lack of things happening and getting on with governing. I believe the people of the province are getting shortchanged with the way we conduct ourselves in there. I would ask that this be included when we have open meetings for the public.

It was on the agenda; it was agreed upon. I would ask that it be included.

The Chair: If I could speak to that briefly, I believe the subcommittee when we discussed this on our conference call, Mr O'Toole, having moved the motion and being the representative of the Conservative Party on that conference call, indicated his willingness to look at the issue of security and the issue of decorum in the Legislature as one and the same issue. He felt we could cover off the two sides of the issue in the same discussion. That is essentially my recollection of the subcommittee conference call.

Mr Stewart: That's great. If we're going to open up to the public, and I have no problems with that, I think we also should get the feeling from the public on how we conduct ourselves in there and what they would like to see as well.

The Chair: I certainly agree.

Mr Ron Johnson: Is it proper for me to move a motion now? Can I do that, or do we have to discuss this more?

The Chair: We're still having more discussion on the general concept. If you choose to move a motion, you can do that.

Mr Ron Johnson: We're sort of flogging it, that's all.

Mr Cooke: I understand Mr Stewart's suggestion and I understand how the Chair is trying to bridge the two items, but I think it's going to be extremely difficult to have meaningful public input on decorum in the Legislature at the same time we're having some limited public input on security around the place. I'm assuming we're really not looking at much more than a few days, given the schedule of the committee. It's going to be hard to do both of those issues.

I don't have in front of me the actual motion that sets up the committee for the break, but that has some meaningful direction for the committee. My only concern is that if the committee decides it wants to deal with decorum in the Legislature, there should be a proper referral and a proper process, but to try to do security and decorum and do all that in three days, all you're going to do is anger people who want to talk about one of the issues because you're trying to do too much and you can't get proper public input. There's no people more frustrated than when they see you're trying to pull the wool over their eyes and say there's meaningful public input when you're not. It won't be meaningful public input on two important issues like that if we have about three days.

1130

Mr Froese: I'd like to reiterate what Mr Morin has said, that when the subcommittee discusses which groups are coming, there's a balance. My concern is that the public coming in could be only those demonstrators who couldn't get in the building—and I feel strongly about

this—the pushing and shoving and so on and so forth, and they're going to say, "This is what you should be doing." On the other hand, there needs to be a balance to get proper input on the security, and I would emphasize that to the subcommittee.

Mr Hastings: Mr Cooke's concerned about getting greater public involvement in this place and trying to minimize or reduce the perception that there's a bunker image being created in this particular institution. Probably one of the best ways of doing it—I see this memo from our committee clerk about the use of the chamber for non-parliamentary purposes. While you may be holding it for a later discussion, Mr Chairman, I'd like to reference this particular item.

If you look at the parliamentary channel where they hold House of Commons mock debates, it seems to me that if you really want to get an antidote against the bunker mentality that supposedly is being created around here, although I'm not necessarily subscribing to that thesis *per se*, one of the best ways is to encourage our young people. I don't know how Ottawa does it, the House of Commons, the staff, or the United Nations debating society, or the parliaments of the universities or the community colleges. Perhaps we ought be looking at having the Speaker play a greater role in the use of the facility when we're not in session. Perhaps we can learn something from the way those folks, when I watch the cable channel briefly, conduct themselves. While there was a little bit of heckling, they seemed to conduct themselves in a very professional way.

I would like to explore some ways we could harness the energy of those young people at a later date. Since we're always trying to get the younger children in here to act as pages, maybe we need some sort of program to bridge that time span from when they're 10, 12 or 13 up into the later teens and early 20s. That might be one specific positive way we could examine: how the House of Commons is doing that, whether there's a budget or how they go about that. It was rather exciting. They seemed to get outside sponsorships. Queen's University, I think, was the host of the last one. Maybe we need to look at that one particular item of many of that kind of thing that both members from the NDP are suggesting.

The Chair: I think some good ideas have come from the committee to assist Mr Christopherson in this discussion. Given the fact that this committee has given general agreement to the concept of putting together a process for public input, did you want to move that the subcommittee be authorized to—

Mr Christopherson: Yes, that's cool.

The Chair: All in favour of that motion?

Mr Grimmett: Can I just have some clarification of that?

The Chair: We're in the middle of a vote.

Mr Grimmett: I don't understand what the motion is that I'm voting on.

The Chair: That the subcommittee—do you want to move it?

Mr Christopherson: As I understand it, what we're looking at is giving a mandate to the subcommittee to work out the specifics of how we might exactly roll out two days of having the public come in, given that there's

not an obvious way to go but there seems to be a desire to do it, and leave the details up to the subcommittee as to how we would do that.

Mr Grimmett: That's fine.

The Chair: So moved. We're in the middle of a vote. All in favour of the motion? Opposed? It's unanimous.

Do committee members have any additional matters they'd like to raise with the committee at this time?

Mr Ron Johnson: I would only refer, since we have 20 minutes, to the two subjects brought up the Speaker, one of which involved staff in the public galleries and the other was some sort of pass for spouses. Those were indicated to be issues he wanted dealt with. I don't know whether we want to deal with them now. Is that a no?

The Chair: There's apathy in the committee.

Mr Ron Johnson: I see that.

Mr Morin: It's not a complicated issue. I don't think it needs—

Mr Ron Johnson: Let's deal with it. We've got 20 minutes. Let's do it.

The Chair: Okay. Would you like to start, Mr Johnson?

Mr Ron Johnson: Sure. Being new, I don't know exactly, with respect, for example, to staff in the public galleries—the concern is that they have to go through the metal detectors. Whether it's a desire of this committee to change that I don't know. My feeling is that it's not necessary for them to go through that. Staff can get into the government lobby or the opposition lobby now without that kind of security, so I don't see why it's necessary, but whether we want to change that, I'd like to hear more discussion from other members.

Mr Morin: That's not a complicated issue. All it is is the training of the security staff. They recognize someone with a name tag and that person is already recorded here, so why would that person have to go through a metal detector? I think the argument Mrs Castrilli brings is quite valid. If the press can circulate everywhere, why can't your staff? They have a name tag so why would they have to go through the metal detector? The persons who have to be advised are the security staff—what are the rules, what are the regulations?—and to change it accordingly. Anyone with identification should be allowed to go in the gallery. What's complicated?

The second issue: If the wives are here, I think it's an excellent idea that they have a name tag. What's wrong with that? It's not costly. It's simple. I don't need a motion for that. Let's do it, period.

Mr Froese: Didn't the Speaker say he was looking into this and looking after it and had advised his staff? I thought he had said, especially with the spouse passes, that he thought it was a good idea and he'd advised his staff accordingly. Didn't he say that? I don't know.

The Chair: I don't recall exactly what he said.

Mr Ron Johnson: He said he'd leave it with us.

Mr Froese: Leave it with us, or leave it with him?

Mr Ron Johnson: Leave it with us.

Mr Bartolucci: He asked us for his input. He wanted our input into both of these situations.

Mr Grimmett: We have a group going on a trip. Presumably when they come back we'll be discussing these and many other issues. Why wouldn't we decide it

at that time? We're going to be doing that during the course of this term, are we?

The Chair: I would think so.

Mr Grimm: I think we should deal with it as part of all the security issues we're going to discuss. The staff may have some comments that we haven't heard in regard to Ms Castrilli's letter, which looks obvious to me, but there could be another side to this issue. I think we should deal with it when the subcommittee reports back.

The Chair: Okay. Seeing no other agenda items, I will conclude this meeting of the committee. I'd just ask all members of the committee who are coming to participate in the security tour tomorrow to meet here at room 228 at 10 am. Could members of the subcommittee plan to stay for a little while afterwards so we can have a subcommittee meeting after the tour is completed to discuss these issues.

The committee adjourned at 1138.

Wednesday 31 January 1996

Mercredi 31 janvier 1996

The committee met at 1305 in room 228.

SECURITY OF THE LEGISLATIVE PRECINCT

The Chair (Mr Ted Arnott): I'll call this meeting to order. Will the honourable members come to order. Mr Stewart, we're starting.

We have with us today the Clerk of the Legislative Assembly, Claude DesRosiers, and I want to welcome the Speaker back to the committee and appreciate his input. Mr DesRosiers, I understand you have a presentation. I'd like to turn over the floor to you.

Mr Claude L. DesRosiers (Clerk of the House): Thank you.

The Chair: I've been advised that the Clerk has requested that we move into closed session to have a frank discussion of the issues that we're faced with today, so I would indicate at this time we will move into closed session.

Mr Bill Grimm: (Muskoka-Georgian Bay): Isn't there usually a decision made by the committee that we go into closed session?

The Chair: It could be a decision of the committee, I guess. Are you challenging the decision of the Chair?

Mr Grimm: I'm not challenging your decision; I'm just suggesting that when there is a decision to go into

closed session, should it not be made by the group? Is that not the general procedure?

The Chair: If you would like to challenge the decision—is there a reason why you prefer to keep it in open format at this time, Mr Grimm?

Mr Grimm: Under the specific circumstances, perhaps not. I just think, as a member of the public myself, I would have assumed that all sessions held in this building would be public unless determined by the group to be otherwise. Is that silly or what?

The Chair: Just due to the sensitive nature of the security issues, I guess if we're advertising where our weaknesses are and anyone in the public has an opportunity to view that, we might all be concerned about that. Do any members of the committee have any comments with respect to this issue? Are there other concerns? I could request, I suppose, a motion to move into—

Mr Frank Miclash (Kenora): I think it's the Chair's prerogative. I have no problem with that, Mr Chair. Go ahead.

The Chair: Are you satisfied with that?

Mr Grimm: That's fine. I think, Mr Chair, though, that it is a sensible comment that when we move into closed session, there should be an explanation for it.

The Chair: Fair enough. We now go into closed session.

The committee continued in closed session at 1307.

CONTENTS

Tuesday 30 January 1996 *and* Wednesday 31 January 1996

Security of the legislative precinct M-17

Hon Allan K. McLean, Speaker
Thomas Stelling, Sergeant at Arms
Allan Hough, acting manager, Legislative Security Service
Claude L. DesRosiers, Clerk of the House

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

- *Arnott, Ted (Wellington PC)
- *Bartolucci, Rick (Sudbury L)
- *Boushy, Dave (Sarnia PC)
- *Cooke, David S. (Windsor-Riverside ND)
- *DeFaria, Carl (Mississauga East / -Est PC)
- *Froese, Tom (St Catharines-Brock PC)
- *Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
- *Hastings, John (Etobicoke-Rexdale PC)
- *Johnson, Ron (Brantford PC)
- *Miclash, Frank (Kenora L)
- *Morin, Gilles E. (Carleton East / -Est L)
- *O'Toole, John R. (Durham East / -Est PC)
- Silipo, Tony (Dovercourt ND)
- *Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions presents / Membres remplaçants présents:

Christopherson, David (Hamilton Centre / -Centre ND) for Mr Silipo

Clerk / Greffière: Freedman, Lisa

Staff / Personnel:

Yeager, Lewis, research officer, Legislative Research Service
Sibenik, Peter, procedural research clerk, office of the Clerk

A20N
XC20
-L20



M-5

M-5

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Thursday 1 February 1996

**Standing committee on
the Legislative Assembly**

Security of the legislative precinct

Chair: Ted Arnott
Clerk: Lisa Freedman

Journal des débats (Hansard)

Jeudi 1^{er} février 1996

**Comité permanent de
l'Assemblée législative**

Sécurité de l'enceinte parlementaire

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Thursday 1 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVEJeudi 1^{er} février 1996*The committee met at 1302 in room 228.*

SECURITY OF THE LEGISLATIVE PRECINCT

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. We continue our discussions on the issue of security in the Legislative Building. We're now at the point where the Liberal caucus has a couple of hours this afternoon to discuss the concerns of their caucus, and we have a guest before us today, Mr Agostino. Welcome to the Legislative Assembly committee. Good to have you here, and we'll turn the floor over to you.

Mr Dominic Agostino (Hamilton East): Mr Chairman, thank you for the opportunity to be here on behalf of our party. I'll be using a little of the time today, definitely nowhere near the whole time allotted to us, and Mr Phillips will be joining us later and can use it as well.

I think the process being undertaken now is extremely important, as it is in the early stages of a new government, and the decisions that are made about the type of security, the approach we take to security and the message we send in regard to security in this building, are going to set the tone for the relations between the public and elected officials here at Queen's Park.

When members of our party have raised issues of concern in the Legislature in regard to security in the last few months, it has been as a result of what we believe in most cases to be excessive, unwarranted security. The approach that has been taken sends out a message that is, in my view, very negative. It sends out a message that this place is not open and accessible to the public.

It is a fact of public life, and we all realize when we get into it, that there are going to be people who agree with decisions we make and positions we take and there are going to be those who disagree. Access to government officials, to government buildings, should be as strongly and as easily available to those who agree with the decisions of governments as to those who disagree; in fact, often we have to take even more care in ensuring that the ability of people who disagree, who sometimes are in the minority, is protected.

What I have seen here in these first few months of this new government is, I believe, a very excessive, closed, restrictive approach to the public. I think there have been gross overreactions to demonstrations that have occurred, and you set a tone and set the stage by having police dogs out there, by having officers on horseback, by having riot squads. You set a tone and set the stage for confrontation. You raise the level of the tension that occurs, and often it invites more difficulties because you're in effect almost challenging the individuals out there.

Most demonstrators are peaceful. Most demonstrators who come to Queen's Park are trying to find a way of expressing an opinion and are trying to get a message across to a government that they agree or disagree. There have been demonstrations in the past few years and I'm sure there will be in the next few years. People come forward to demonstrate in support and agreement with a government. That's going to happen and will happen from time to time.

I believe we have to take all the necessary steps to maintain that balance. Yes, there must be a level of adequate security to ensure, obviously, that people demonstrate in a peaceful, quiet way, but at the same time there is that delicate balance that I believe is missing right now.

I cannot help but wonder whether this is part of an approach to shut out the public from the governing process, whether the mentality is that the government is trying to use this committee and the powers of this committee to ensure that the public, particularly those in the public who disagree with this government, do not have access to this building.

I see the barriers outside, I think totally unwarranted. I think what we have said to the public is: "Here's an invitation. Jump over these barriers." This move was implemented early in the term of this government. The other morning I pulled into the underground parking lot and there were three or four OPP vans with police dogs in the vans. They were there because obviously they expected some violent demonstrators to be here that day. It is not an uncommon sight any longer to see OPP vans with guard dogs parked around the building and underground here. One must question what message that sends out and one must question how effective that is going to be as a tool this government is going to try to use to keep people out of Queen's Park.

I don't want to see a situation like we have in Ottawa where it's become a fortress. Frankly, a constituent who happens to be in Ottawa or a member of the public who wants to see an MP must go through an unbelievable cordon of security, cannot go within a foot of the front door without literally being strip-searched. Someone in a member's office has to, first of all, confirm that the individual is there visiting that particular member, so that's easy because if it's someone who may come forward to express an opinion you don't like, you just tell them at that point that you don't want to see them. So that is an effective tool for shutting out the public. You then have to wait for someone to come and get you, bring you to the office and go through all this process: security badge, visitor badges, all these other things that occur. It is a very discouraging, intimidating process for most people to access.

This building belongs to the people. This building does not belong to the elected officials. Access to this building should not be restricted to the individuals who have security cards, to individuals who have the nice MPP pins that we wear and to individuals who are able to get the colour-coded bar cards we're using. As it is becoming now, that is generally the only way people are going to have access to the Legislature, and I don't think this is going to work.

We have security already with the galleries and the chamber. There has been talk of things such as putting a glass protection in front. There's been talk of things such as pepper spray for the officers here. I think these moves are regressive, I think these moves will only invite further trouble, and I would urge this committee to tread very carefully in not making this place basically a fortress.

1310

We have what I believe to be adequate security in place at this point. You may want to take steps to limit visitors to one or two entrances if that makes it easier to flow people through the building. Those types of commonsense approaches, in my view, do make sense, but when you start talking about placing metal detectors at every door, basically making it very difficult for an average individual who is not part of this government or part of the legislative process to come through, I think that is wrong.

But more important, it is what happens outside of this building and what happens on the grounds of this building that we have to be very careful about, because we should never, ever do anything to try to stop or intimidate individuals who choose to express their right in a democratic society to protest, to oppose or to fight any government action. Rightly or wrongly with their view—we may agree or disagree with their position or the stand they're out there demonstrating for, but we cannot intimidate and we should not intimidate the public.

I can tell you right now that I believe there is an effort here to very much intimidate anyone from coming to the front steps of this Legislature and protesting and expressing their point of view. I think that is undemocratic, I think it is brutal and I would urge the government, which has a majority on this committee and a majority in this House, to be very, very careful.

You're in government right now, but we've had governments change in the last three elections in this province and in four years things may change again. We don't know; it may stay the same. But I think you will be fighting very hard four years from now, if you're not re-elected as the governing party of the day again, to ensure that the minority voice and that opposition voice has the opportunity to express itself on the front lawns of this Legislature, and you will be moving then to undo some of the damage and some of the measures you have put in now to restrict it.

I want to end with a quote. John Kennedy expressed clearly what our system's all about: "Governments that try to dissuade peaceful opposition often will invite violent revolution." I ask you to think of that and I ask you very much to ensure that you allow peaceful opposition and that you allow peaceful demonstrations here, because the alternative, if you stop doing that, is that

you're going to create a war zone out there every single week when people come here to protest.

The Chair: Thank you, Mr Agostino. You've given us a detailed presentation of your concerns. We have about 15 minutes, if you'd care to answer some questions and engage in a dialogue with some of your colleagues. Are there any questions for Mr Agostino at this time relative to his presentation?

Mr David Christopherson (Hamilton Centre): I appreciate your comments, Dominic. I think you'll find that a lot of them are shared by members on both sides of the House in our deliberations so far.

One of the things that is clearly apparent to us when we look—for me, coming at things the way I do philosophically, what you've just outlined is my first natural approach too. When one looks at it a little further, you begin to realize that there is a question of legitimate security for those people who are coming to this building. They're entitled to a certain level of security when they're here in their building.

We've had a fair discussion around the staff: each of our own staff, the staff who support the committees, support the Legislature. They are totally at our mercy, if you will, in terms of the security or lack thereof that's provided for them. They get very little say. I wouldn't mind your thoughts on just broadening out and acknowledging the other side of the equation. How heavy do you see that, and do you have any particular insights or suggestions as to how you would like us to look at both sides of that equation—assuming you agree. If you disagree, I'd certainly want to hear that too.

Mr Agostino: I agree, David. As I mentioned, I think there has to be a balance there. Our staff—we're elected officials. We realize that sometimes there are risks that come with that job and we realize that often unpleasant confrontations—hopefully only in a verbal manner—with the public will occur. But our staff obviously doesn't run for public office and in a sense should not expose themselves and put themselves on the line in the same way we do. I believe that there should be steps taken, obviously, to control that flow.

One of the things you want to look at is, again, controlling the flow of entrance to visitors into the building, whether it's here or the Whitney Block, for example. Many of us have our offices in the Whitney Block and access to that building is obviously much easier. There's less people around and less security of access to this building.

You may want to look at a system where you have some sort of a sign-in format—I think that would make sense—or even some sort of visitor's badge of some type that allows for people to know you're here as a visitor and that the access—and there should be areas, obviously, that may be off limits. I don't think it's unfair to suggest that certain areas at times may have to be legitimately off limits to the public—it happens in Ottawa, it happens in other legislatures—as long as it's done in a fair manner and those areas are agreed upon, say, in a committee such as this where there's a consensus.

If it's clearly the government side of the House, whatever government it may be, trying to say, "This area or that area should be off limits," only to protect them-

selves from the public even coming into interaction with them, I think it would be wrong. But if there are common areas that the three parties here could feel should be off limits to the public during certain times of the day or when certain things are happening, I would see that. I would see some sort of sign-in procedure in a very relaxed fashion, not sort of a "Bang, stop here," that sort of approach. I think Ottawa's gone too far. I think the steps they have taken are excessive and don't invite the public to come in.

I share your concerns with regard to the public or to access to the buildings much more, and I believe there should be some controls and restrictions, obviously, to protect our staff to a great degree, which is a different situation than, say, what happens outside when people have tried to protest outside and have been intimidated. I really do see a difference between the two but I very much hear what your concerns are in regard to our staff. I think there's got to be a balance there, and I think the committee, all three parties, can come to some consensus as to what that balance will be.

The Chair: Thank you very much. Mr Johnson, do you have a question?

Mr Ron Johnson (Brantford): I want to thank you, Dominic, for some of the comments you made, and I know that we on this side agree with a lot of what you said. I have a couple of questions. Number one: A number of times you insinuated in your remarks that it was the government of the day, ie, us, that was controlling the security here. I would like to know, first of all, how you came to believe that.

Secondly, I want to know whether or not you have any suggestions. One of the problems that we seem to be facing in terms of security is, as you're well aware, some protesting within the galleries. Any suggestions on how we can better cope with that, ie, through these name tags perhaps that you were talking about?

But my first question, of course, is how you came to the conclusions that you came to.

Mr Agostino: Security, technically, is a responsibility of the Speaker and the Sergeant at Arms. That is the technical way that it is done. But let me tell you that when those barriers were put up, this government had the authority to have those barriers removed. They chose not to do that. This government, through the Speaker, and let's not kid ourselves, through the House leader—I mean, the government House leader would have a great deal of influence to go to the Speaker and say, "On this security measure we think those barriers should come down."

In regard to the level of security here, those decisions are not made independently. Obviously there are times when a minister's office or the Premier's office will call and say: "We expect there's going to be a massive demonstration out there. Beef up the security." So those approaches—very clearly there is a government of the day. You're responsible for what happens here. Ultimately the buck stops with the government from the point of view of what happens inside and outside this building and, at the end of the day, this government has a great deal of influence as to the level of security that's around here. I don't buy for a moment that it happens totally

independent of the government and the influence of government.

Mr Ron Johnson: Just as a follow-up to that, does it happen totally independent of the government? I would hope not, nor would I hope that it happened independent of the other two parties as well. I think that as members, and I've said it before, this is one of the very few issues which really is a non-partisan issue that all three parties should work together on to establish clear guidelines with respect to security.

I would suggest to you as well that the criticisms you've levelled towards the government with respect to their actions or inactions concerning the barriers—I'd be curious to know what actions the other two House leaders took, and I don't know what actions they took with respect to those barriers, because I see it as a responsibility of all three parties in terms of security. Quite frankly, to suggest for a moment that this government as a party or as members on the other side of the House acted inappropriately with respect to security is unfair. I think it's a responsibility that's shared by all three parties in the Legislature.

Mr Agostino: You're not suggesting, though, that your government House leader or your Premier would not have the ability to be able to have those barriers outside removed.

Mr Ron Johnson: I would, quite frankly, hope that isn't the case. I would hope that it would require some unanimous consensus around the table, to be quite honest. 1320

Mr John O'Toole (Durham East): Thank you, Dominic. It would appear to me, without being too direct, that much of what you said is not correct. To correct the record, I don't believe under the memorandum of understanding that was indeed part of your government's kind of contract with the OPS and the OPP and the duties of the Speaker. I think those were the rules of the day. I don't want anyone to believe, in the record of this meeting or those who may listen, that the government—and I would not, like my friend Mr Johnson, support for one moment that the Premier has an autocratic, dictatorial right. As a committee of all three caucuses, I want that to be clear.

I really think it is the duty of the Speaker, and the Speaker has made reference to this committee to look at it objectively and to come up with a set of guidelines. It's important to have a look at that memorandum of understanding. We had the privilege of reviewing that, and perhaps you haven't.

You use a couple of things that are in themselves kind of inflammatory. That's part of the problem here, the way we state—I would ask you a question. The word I'm having the most trouble with is "demonstration." It takes its form in many forms. Should the level of demonstration be the same inside the building as outside the building?

Mr Agostino: No. Obviously, I think there must be further controls inside the building; not control access, but control demonstrations obviously.

Mr Christopherson made reference to the staff and the level of protection and security we can afford our staff, and we should be able to afford our staff, which are

obviously working in offices, working inside this building—obviously, I don't think you can allow unfettered demonstrations and disruptions inside the building to a great degree because people are working and there are things happening. It's a different kind of situation.

That doesn't mean you limit access. What I think you should do is you obviously have to take some steps to limit what happens and to ensure again that there's an atmosphere—and I think part of that is how we set that atmosphere up. If we can do our part, all of us as legislators, to set up a climate where it doesn't invite and it doesn't look like we're sort of egging people on or tempting people, I think you will see a lowering of that level of anger or frustration at times that occurs in the demonstrations.

Mr O'Toole: I recognize and I've heard—I'm learning each day, but I'm not new to the process, having been involved since about 1981 in elected office. I've seen very highly sensitive things that come up, and people do have the right to dissent. I fully comply with that. I recognize that. But I think there's a certain amount of safety, public safety.

Then I look back to the leadership—and you know, we've all used the word that we have members' privilege, and with a privilege goes some responsibilities. As you say, as a member, to be part of instigating a demonstration I think is inappropriate behaviour. Once the kind of mob psychology takes over, it may end up that people quite innocently are hurt through crowd behaviour and various things. I think that happens. I really do think it happens. In fact, as I watched the record of the demonstration on the opening, there were people who were innocently and rightly protesting who were hurt because of the whole mob mentality thing.

I draw it to your attention because we visited the galleries and in the galleries there's such a steep pitch that if somebody stumbled, they could technically flip right over the side. It's tragic. It's the first time I had been in there since I remember once as a child at school or whatever.

I just think the first point I was trying to make is that there is a set of priorities that we're working on to empower the Speaker, in complete isolation from the government, to make the proper decisions to bring to bear the right amount of security and to pre-assess what kinds of actions or proactive action should be taken to prevent any kind of intrusion into the sacred space of this building.

I'd ask you one last question. Do you believe that demonstrations in the gallery by a member are something we should accept as just—

Mr Agostino: By a member?

Mr O'Toole: Yes.

Mr Agostino: A member of this Legislature is accountable to the people who have elected that individual. If a member decides that that member is going to take a demonstration in his or her seat or in the gallery, they have a right to do that. They're accountable to the electorate; they're accountable to the people who have elected them. We have to take responsibility for our own actions. If a member chooses to go up into the gallery and scream something from the gallery, that is really the

judgement call of that particular member and obviously that particular member will then have to take the responsibility for that.

The Chair: Mr Agostino, I want to give Gilles Morin—

Mr O'Toole: Yes, just one more question on that same line. Do you think there should be any—

The Chair: Mr O'Toole.

Mr O'Toole: Yes, all right.

Mr Gilles E. Morin (Carleton East): I just want to make a statement. I've been sitting on this committee for 10 years, except for one year when I was a minister. It's a committee that always got along extremely well. We should soft-pedal it, because it's not to the Premier, it's not to the ministers, it's not to the House leaders to dictate to us what we should do about security. It's our House. Sure, it belongs to the public. It's also our House. Let's make sure that we can debate; let's work together.

We're about to submit a report after this committee, and if we submit a report where there's no common agreement, we won't achieve anything. Again, it's going to be tokenism. It's going to be left aside; it's going to be dormant.

Mr Agostino didn't have the occasion, wasn't privileged like we were during the past two days, to visit the House, to listen to a presentation made by the OPP, to listen to some witnesses, to the clerks, their concern. Before we submit a report, I think the OPP should have the opportunity to speak to the members, to show them exactly, to show all, if you recall, what we saw yesterday, the cases of bomb threats, articles that were stolen, people who walk in.

No, I don't want to see it becoming a fortress. I don't think any of the members want to see it as a fortress. But let's try to negotiate a deal that we all get along, because let me tell you, if there is a committee that I enjoy sitting on, where the members became my friends, it's certainly this committee. Because who do we work for? We work for us. We work for the members. So let's not be confrontational. That doesn't achieve anything, honestly, because the moment we get angry, we don't think properly. That's the statement I'd like to make.

The Chair: I have Mr Froese next on the list, if you could be to the point.

Mr Tom Froese (St Catharines-Brock): I appreciate those comments, Gilles, because my comments were going to be on the same line. It's really unfortunate, Dominic, that you didn't have the privilege of sitting in here like the rest of us did and going through the last couple of days, getting an understanding of exactly how security happens around here.

I do have a little bit of problem—and I guess nobody's going to be here from the NDP caucus, but I certainly hope that when they come in, they understand before they make their presentation how security happens so that we don't go through something like this when Dominic says—I do take exception to the accusation that it's the government that is in control of the security. Clearly it's not the government side; it's the Speaker and what all has happened in the last 10 years or however many years to develop the security up until now. I guess that's where we maybe take offence on this side, because it doesn't

matter what government of the day it is, it's not responsible for the security; it's the Speaker, through this committee and recommendations, and so on and so forth. 1330

I do appreciate the comments that you made with respect to those security issues directly. Politics is politics, I understand that, but I think we really have to be careful in getting our facts and information right before we say certain things, although if I were sitting in your position, not going through the number of days that we did and understanding how security works around here, I probably would have said the same thing. So I think we just need to be careful, especially on an issue of this type.

Mr Agostino: Mr Chair, could I respond to that, please?

The Chair: Certainly.

Mr Agostino: First of all, I've spoken to members who took the tour and heard some of the comments and the feedback that came from that, so I was aware of that happening. I understand, as I said earlier, how technically, within the rules, security is handled by the Speaker and the Sergeant at Arms. But maybe it was just a mere coincidence, though, that when the incidents occurred outside, we had members of both opposition parties get up and speak to what I believe to be an excess, too much security and too much of an inciting and too much of a situation that looked confrontational, and we had government members speak up that security should be tighter. That is fairly consistent with what happened in the House. That is fairly consistent with the view of the House, of people who spoke in the House.

The comments with regard to the government having control: I just cannot believe that you're going to sit there and suggest that the government of the day does not have control over security in this building. I think that's ludicrous. Of course you have control over security in this building.

I think we're all trying to get to the same stage here; it's a question of how we do it. I think all of us are trying to ensure that this place is safe, that it's accessible. I guess the difference that may happen between some of us is, how do we get there and how far do we go to ensure that it's safe and accessible? I think that is where the split comes in opinion, not necessarily the goal of trying to make sure this is a safe place for ourselves and for our staff in here and that we balance the need for the public to access this building.

The Chair: Mr Johnson, one last, brief question if you choose to. Okay, I want to keep this moving along. Thank you, Mr Agostino, for spending your time with us for the last half-hour and for giving us your advice. We appreciate it.

Mr Agostino: I thank the members of the committee, and good luck in the rest of your deliberations.

The Chair: Mr Cordiano, you're next on the list.

Mr Joseph Cordiano (Lawrence): I want to thank the committee for giving me this opportunity; and my caucus, for that matter, because that's who decides these things, the House leader. Let me just simply say that I think this is a very, very important matter that concerns every member of the House. To my colleague, Mr Morin,

you're absolutely right to say that. It should be taken in the spirit of non-partisanship and I hope my comments will be taken in that spirit.

I can recall when we were dealing with the issue of free trade—and I relate this story to you because it gave me a sense of what security was all about—when I first visited the city of Washington. We were on the committee that was examining free trade and we went there. I arrived there for the first time. Going to Congress was quite an experience for me, as well as visiting with various senators and congressmen and going through the various federal buildings in the capital of the United States. I, along with my colleagues who were there for the first time, was pretty overwhelmed by the fortress that was set up—the armed camp, virtually, that was presented to us. Every single building we went through, it was quite an ordeal to gain access.

That's probably as it should be in Washington, where the murder rate at that time was probably the highest in the United States. There's a handgun for every single person living in the United States. The level of violence, I don't need to tell you, is much higher than it is in this country. The observation that members made at that time, those who were equally somewhat disturbed with what was presented to us in terms of that level of security and simply saying that's necessary, we said to ourselves once we got here: "Well, thank God we don't have that kind of situation in our country and in our Legislature. It simply would not be appropriate for us, given the kind of society we are, and we hope it never comes to that." This was in 1986.

Here it is 1996 and we're discussing what I think is the issue around balance: the right for public access to this building, the right for security for everyone who is working in this building, the right to conduct the demonstrations that we've seen before the front lawns of this Legislature, the need to continue to have a semblance—and I say a semblance—of real exchange between citizens who want to demonstrate. The need for that to take place in a democracy I think has to be maintained. At what cost is the question. Do we allow for less security to enable people to demonstrate in the way that they want to demonstrate?

I understand we cannot have the occurrence of violence or the threat of violence. Even the threat of violence would dictate that we take measures to prevent such violence from occurring. Mr O'Toole, I was shocked that day that there were protesters when Bill 26 was passed and on previous occasions where demonstrators were taken out of the galleries of the Legislature, and the steepness of those steps. I had the same fear. I was literally concerned and quite frightened by the prospect of someone tumbling down those stairs and probably seriously injuring themselves, if not killing themselves.

I think when that situation occurs, appropriate measures have to be taken by the Speaker, just to deal with that for a moment. If it is the Speaker who is making unilateral decisions, if ultimately the authority resides with the Speaker and he will consult with this committee on an ongoing basis to grant him that authority and to grant him the advice and the opinion of members of all the House that you represent on this committee,

then we have to insist at this point that the Speaker take an interest in shaping the security so that it does not prevent peaceful demonstrations, so that it does not incite violence, so that it continues to maintain an appropriate balance, given the state of security that's necessary today in 1996.

Not knowing the details of your deliberations over the past two days, and I don't have the insight of that knowledge, as was pointed out, I do believe that notwithstanding that our society perhaps, regrettably, has become more violent and perhaps the level of anxiety has increased over the last number of years and therefore the need for security increases, I for one do not want to be a part of a Legislative Assembly, a Parliament that would see the presence of an armed, almost a quasi-military or paramilitary presence on the lawns of the Legislature each time there is the threat of violence in anticipation of a big demonstration.

Of course you need security. Of course you need support personnel and personnel to deal with emergency situations, but the image of police officers on mounted horses and the other accoutrements of that that existed at Hart House Circle on the day that the Legislature sat for the first time, I think that was a very negative image. I hope everyone agrees that that level of armament, if you will, the image of that is just not acceptable in Ontario. I think that will further incite in the future people who feel they must mount a demonstration to get attention. So it becomes one-upmanship. You have that much security on the grounds that is visible—and I know it was off on Hart House Circle, but that gets reported in the press, certainly. There is a presence; you can't hide that. Then the next time there's a demonstration, people feel that in order to get that attention, to get that sort of exposure they're looking for, something must happen. So it's one-upmanship. The stakes become higher and then you defeat the purpose of having a balance and maintaining the kind of security that we all want around here.

1340

I would just caution members of the committee that your advice to the Speaker, if he's making these unilateral decisions—at the time that they're made I don't think he would hastily call a meeting of the Legislative Assembly committee. He obviously consults with officers of the Legislature and seeks their advice, and perhaps makes a decision with the Sergeant at Arms. Whoever else is involved in making that decision, he bears the responsibility for that decision. I would hope that your advice to the Speaker, at least, would sound the tone for balance, that we do not impose a psychology that sees that one-upmanship with a crowd that's determined to make its point on the front steps of the Legislature.

As for internal security, over the years I've had various staff who have, at one time or another, been concerned about people who visited our office, and so whatever steps are necessary—to perhaps have people sign in, which is I think the method that's followed at the present time. This particular building has freer access than—perhaps at this point in time you're contemplating increasing the limitations to that access. I don't know what particular steps you're taking or contemplating, but I would ask that the demonstrations that are big, public

demonstrations, that you deal with those very carefully; that we do not in fact defeat the very purpose of the security measures that we're taking; that peaceful demonstrations are allowed to continue on the front steps of the Legislature; that we not send a signal out to the public that if you come to demonstrate at Queen's Park there is an increased possibility for violence. That would be my message to you today, that this not be the case, that in your report you make this very clear.

Additionally, internal security: I think it's warranted to have persons who work here secure, that they feel safe at any time of the day or night, that what steps are necessary to be taken have to be taken. I think that there should be controlled access. I can agree with that. There is, to some extent, some control, but not complete control. Again, we need balance there.

I don't want to get into the details of what you're contemplating, but suffice it to say that we do not want to create a fortress around Queen's Park, the kind of armed camp I saw in Washington, in Congress. I hope we never see that here. I hope there's no need to see that here. Perhaps you have further information that would contradict that.

Again, I say that each and every one of us has a responsibility to try to maintain that level of democracy where it is possible for someone to visit your office, someone to visit a member of Parliament without having to be interrogated, without having to be put through the wringer, so to speak, on security each and every time they access this building.

Those are my comments to you and I hope that you would ask further questions. I would like to discuss any of that with you.

Mr Ron Johnson: The thing I'm noticing about the comments that were made is that it's all in keeping with, I think, what we all understand and what we all agree with when you talk about open public access, when you talk about protection for staff, for members, for the people who are visiting. The confusion I have, and I look forward to seeing actually seeing the report, is that I'm hearing a lot of generic comments. I'm hearing a lot of how you don't want a fortress and how we want to make sure—in particular I guess with respect to security outside the facility.

My question would be, what sort of recommendations can you make to help deal with security outside? The day of the throne speech is probably the best example. How else would it have been dealt with? Not that I sort of condone the actions that were taken—in many ways I don't—but how do you deal with that if you have a large number of people who do in fact want to storm into the Legislature? The only way I can see in front of me to prevent that is to have security personnel out front.

I don't understand where you're coming from with respect to the fortress analogy. I don't think we have a fortress here. I don't think this committee has any intention of going in that direction. But at the same time, I understand that Ron Johnson doesn't know everything about security. I've never worked in security in my life and I would guess that probably none of us has. The police officers have. They're professionals and they know how to deal with this sort of thing.

What recommendations can be made from your caucus with respect to dealing with those types of situations where you have large crowds out front that have really one single goal in mind, two in fact: (1) to demonstrate and (2) to get into the building? How do you prevent that without security personnel out front?

Mr Cordiano: I don't know that the intention of any crowd out on the lawn at the front steps of the Legislature would intend to get into the Legislature and would do so by way of violence. There should be a view that anyone could enter this building under circumstances where there is no demonstration of violence. I don't think access should be restricted to anyone; if someone wants to enter the building, they can.

If there is a crowd of 5,000 people, as there perhaps was on the day in question that we're talking about, when you assemble, as I suggested to you, all the security that was assembled in this place, I defy you to argue that there wasn't a fortress mentality that day, I really do. The image that presented to that crowd was, "We're going to take you on." There is a judgement to be made on those kinds of days where you know a demonstration will take place. At the end of the day, when you beef up security to such an extent as we saw that day, I believe that further incites a crowd, and as I said earlier in my comments it's one-upmanship at that point. At that point you are raising the stakes.

I would hope there's consideration, when you're making decisions around the force to be used, of the size of the security force and how visible they are. I think there should be standby forces, yes, but I don't think they need to be onsite, I really don't. Perhaps I'm wrong. Perhaps the experts in the security field would argue with that, but where does it stop? What size of force should there be and who's making that decision, at what time? So you would want to question that.

Mr Ron Johnson: My only concern is I don't want to lose sight of the fact that sometimes security is necessary on the front steps at Queen's Park. It may not look attractive. It may not be the image we want to portray—

Mr Cordiano: The question is, how much?

Mr Ron Johnson: This is what this committee needs to address: How much? The other question of course is, when is it necessary to be there? I'm hearing a lot of generics again and I guess it's a little short on detail for my liking, but I haven't read the recommendations and I look forward to doing that, and quite frankly I certainly will look at them very objectively.

Mr Cordiano: If I may, just one last point: It's a question of the visibility of those security forces. I think that's pretty detailed. You would not want to make that assembled armed force that was off on Hart House Circle visible to the demonstrators or the public; therefore, do not assemble that kind of force. They're just waiting there, saying, "We're ready for you when you come." The psychology involved there, as I explained earlier, is threatening.

1350

Mr R. Gary Stewart (Peterborough): Just two or three short questions: Do you believe the Speaker should have the control or should there be a separate group set

up or a separate individual to oversee this who is totally not a politician and would have no bias whatsoever?

Mr Cordiano: I would assume the Speaker would not have any bias. He's acting in the interests of the—

Mr Stewart: We just heard a little while ago that there could be biases. Again, I'm not trying to—

Mr Cordiano: I don't know that we heard that. We heard that the government could be biased.

Mr Stewart: Well, that's what I'm saying.

Mr Cordiano: There were suggestions that the government had made that decision.

Mr Stewart: But I'm talking about, do you think there should be some thought given to a separate identity, rather than a politician, whether it be the Speaker—I don't care what government's in power—to have that type of control?

Mr Cordiano: No. Ultimately, we, I believe, are responsible collectively, as members of this Legislature, for everything that happens here. I think the buck stops with us and our representative is certainly the Speaker, and so he would make that decision. I think that's most appropriate.

Mr Stewart: You were talking about open access, that the door should be open to everybody. If there had been no security over the last couple of weeks and couple of months, do you think it would have stopped the \$5,000 or \$6,000 worth of graffiti that went on here the other day, or the various demonstrations, the breaking of glass, the breaking of doors and so on? Do you think that would have stopped if there'd been no security here?

Mr Cordiano: I think the appropriate question to ask is: Is this occurring because this is the Legislative Assembly or is this occurring relative to other institutions in our society, if that's the level of civil disobedience that's occurring? Obviously, I believe there needs to be an appropriate level of security for this building and the entire precinct. What we're discussing today is the balance that has to be struck between a need for access—

Mr Stewart: If we have open access, how can you stop that sort of thing? The other, final question is, we've not talked about security or protocol or conduct or decorum in the House. We heard a few minutes ago that a gentleman thinks it's fine to get out of the seat, run up, demonstrate up in the gallery and then, I assume, come back down and sit down. I guess my big concern is that whether it be MPPs or various other groups, we are inciting to riot, and I don't care whether it's just standing up and saying, "Hey, Harry, start yelling some more," we are inciting to riot, and that causes—

Mr Cordiano: I don't want to get into that—

Mr Stewart: Well, we should, because it's the total package and we're just singling out one thing, because that type of security and conduct has got to be part of the security in that House because that's what incites people to do what they're doing.

Mr Cordiano: I think that's an inappropriate level for me in the context of what we're discussing today. I would separate those two. What members do in this Legislative Assembly, either waving placards or demonstrating or shouting catcalls at the government side: I don't think you can link that with the violence that took place on the opening of the Legislative Assembly back in the fall.

Mr Stewart: But you see, that violence may not have occurred the other day in that House if there hadn't been some inciting to riot by some of the people who—

Mr Cordiano: Because I could then make the argument—

Mr Stewart: I think it's a total package, that's all.

Mr Cordiano: Then I could make the argument that the way Bill 26 was introduced incites the public because it again antes up the stakes to the public, and a large segment of it felt that what was being imposed on the public was done so undemocratically, and therefore you've now incited the public in some way to demonstrate against that imposition of undemocratic legislation.

Mr Stewart: Other things have been done before, so what's the difference?

Mr Cordiano: We could argue about that incessantly, about how—

Mr Stewart: I think that's what we're talking about.

Mr Cordiano: I think you have to distinguish between—

Mr Stewart: It's a whole package, is all I'm suggesting.

Mr Cordiano: I think you have to clearly distinguish between demonstrators on the front lawns of this assembly and the security forces that are responsible and have to engage with members of the public and what their role should be and what their conduct should be. I think that's where we'd take real responsibility for the conduct of the security forces, and obviously the Speaker must maintain a certain tone and deal with that as his responsibility on behalf of all members of the Legislative Assembly.

Mr Frank Miclash (Kenora): Joe, you were indicating that you've been to a number of places. You talked about the American style and the armed camp mentality sort of thing that you saw down there. We're going to be looking at both Quebec and Ottawa in terms of access to their buildings. I'm just wondering if you have any comments as to how you would like to see a person secure access, whether it be to come here to look at our displays and display cabinets, to come here for committee hearings, to be part of or to be involved in watching the committee hearings or to visit a member's office—just some comments around that from your experience.

Mr Cordiano: I think you can separate out the areas of the building where you would want the public to have free access and the parts of the building where the security measures should be enhanced. Where our staff work, where in fact we work, the committee rooms: I think you can certainly make a case for a different level of security in those areas. I don't know if that answers your question.

Mr Miclash: What you're suggesting is that the public would have access to, say, the first floor, but would not be allowed on other floors—this is just an example—where you'd find a lot of the displays, you'd find the committee rooms or—you see, it's difficult.

Mr Cordiano: Some care would have to be given to that decision, but you do have committee rooms. Some committee rooms, such as 151, are on the main floor, so therefore you're obviously not going to secure the area around 151. I think you can use a certain amount of logic to determine that that room has to be secured in and of

itself and perhaps not the area around it. But certainly these hallways can be more secure than the other hallways that are in the building. In the main part of the building, the entrance, the foyer, there can be unfettered access to those parts of the building.

I don't happen to think that we need even that level of security, personally, but am I to argue with others who perhaps have a different view, some staff, who feel less secure? I've never felt insecure, to tell you the honest truth, my own person. I've never felt that we needed any more security than we've had over the years, but I suppose you're hearing a different story and you have a certain amount of insight and knowledge that I have not been privy to and that may change. I'm qualifying what I'm saying to you as a result of that.

Mr Miclash: Sure. I like your idea of separating the building and of access to certain portions of the building. You talk about the entry. We were down there yesterday taking a look and I kind of like the idea that a person walking into the building should at first feel welcome when they come in. I'm looking forward to going to Ottawa because the last time I went in, I didn't feel welcome. I felt I was intruding on somebody the minute I walked through that front door. So the comments that were made yesterday down there along with your comments today: I think it can be a happy mixture.

Mr Carl DeFaria (Mississauga East): Mr Cordiano, you mentioned the visibility of the police force can encourage violence. I happened to be at some demonstrations where the lack of visibility actually causes more violence. I've seen demonstrations where you'd see only two or three officers visible and people get carried away and become more violent and all of a sudden you see a SWAT team of 30 or 40 officers throwing people to the ground and arresting them.

Don't you think that if the police force around this building would be more properly trained and sensitive to the fact that a peaceful demonstration is a democratic right of individuals to undertake, if they'd be sensitive to those issues, when you have a large crowd like we had at the opening of the session, the visibility of officers in uniform, sensitive officers who would be trained in crowd control, that would actually prevent what took place on that day?

1400

Mr Cordiano: I can't disagree with you. I think that having these officers properly trained is a given. I think you would not want to have anybody who's not properly trained, and I would assume that that is the case already. But having a large assembled force that sits in the wings waiting to pounce on people, I don't think that's a very positive message to that crowd. Ultimately, if that use of force is necessary, there must be a protocol by which that can be carried out. There must be other ways in which to set up a system that would permit that.

But to see happen again what happened the first day of the legislative sitting would really sadden me. It would certainly not make this place an open Legislative Assembly, open to people who want access to it. I think that you then again go back to this level of one-upmanship which will occur. The next crowd will be even more vociferous and even more agitated and the level of

anxiety will increase. I honestly believe that. That is my belief.

Mr Rick Bartolucci (Sudbury): Thanks, Joe, for your comments. Certainly they're based on experience and I appreciate them.

I'd rather not talk about the outside. I think right now we should be concentrating on the inside, because the majority of the problems that happened on the opening day were because of a plan that didn't work on the inside. So maybe from your experience you could give us what your interpretation would be with regard to chains of command. We know that the Speaker is in charge of the security, but on any opening etc he's busy with other responsibilities. He designates that to the Sergeant at Arms. Should he be, then, that person who makes all the decisions with regard to security within the building?

Mr Cordiano: Again, I would like to ask these questions of those who were engaged in that. I'm sure there were others involved in making decisions and in offering advice: the head of the OPP detachment, who would have made his or her advice available; the other government security officers who are part of this assembly, the top-ranking official there. I would imagine that the Sergeant at Arms would have input from those people, and if that's not the case, then that should be the case. The decision would be arrived at based on information that is available, information that's gathered about the type of crowd it is and information that I'm sure is made available at that time and was made available regarding the incident at the opening of the Legislative Assembly.

Mr Bartolucci: I think, without divulging anything that was discussed in camera, because we don't want to do that, it's very clear and it was said in open meeting that there were mistakes made, and the mistake was that there was no clearly defined order or chain of command, which is so important. But as I talked to committee members after the committee, we all have the same frustration. Nobody wants to accept who is responsible here. That's why I'm asking for your input. As a member with experience, should it be the Sergeant at Arms who, designated that power by the Speaker, is responsible for ultimately making those decisions, within this building?

Mr Cordiano: I think the Speaker should be a part of every decision that's made. I don't think the Speaker should be left out of that decision-making process. The Speaker has to become apprised of that information and what's involved with security. That's part and parcel of his responsibility, so he has to become more knowledgeable in that area. He has to be able to make those decisions, albeit difficult decisions; someone has to decide that. If we believe that the Speaker has the authority, then the Speaker should make those decisions, with the information available to him as I described in the protocol that's appropriate, with those security officers at the table.

The Chair: Thank you, Mr Cordiano. We appreciate your advice. Mr Phillips, you're next. Welcome to the committee.

Mr Gerry Phillips (Scarborough-Agincourt): Thank you very much. Is this where the witness sits?

The Chair: The ones that aren't getting paid.

Mr Phillips: Let me try and give you my concerns or my hopes that the committee might consider. I think in an era when the public is looking for openness and access and instant communications and feeling a part of things—you know, all the 1-800 numbers and that sort of stuff—we're in danger of going in the opposite direction. Maybe we have no choice, but at least we should examine whether there is a choice or not.

This place is almost a metaphor for closedness in that if you look at the place, it's surrounded by a moat. There's only one traffic light that allows you to cross the street. It's a throwback to an era when, I guess, governments knew everything and the public was not particularly welcome to the institutions. There isn't even a taxi stand here. Actually, it's a fairly tough spot to get to for the public, and I have a feeling that may have been deliberate.

Right now at the municipal level, access is pretty easy. People feel they've got access to their elected people there routinely. They at least know where the decisions are being made and they know there's some vehicle for them to come and express their views, and every municipality has those forums for them. Here, for a variety of reasons, we're going the other direction, which is that the access is even tougher now. I understand why we got to where we are, but I think there is a risk that we are going to make the situation worse by people feeling even less access to their government. I would think, particularly for the government members, they may want to really think this one thing through, because almost the last thing you want to do is to look isolated, to look like, "Boy, they are holed up in their bunker and there's no way we can even see them." So that's the challenge.

Frankly, I don't have a lot of creative solutions. I hope you people have the time to examine creative solutions, but I think we are sowing the seeds of more isolation from government with the direction we're going. I suspect that inevitably, when there's a demonstration, there are the professional demonstrators who come looking for an opportunity to do whatever they do. But in that crowd are a lot of people who have never been to the place before. It's the first time they've come, they're frustrated about something, and their first exposure is that it looks like an armed camp of some sort. I suspect that the route we may go is we're going to make it more like that. You know, we're going to head off any opportunity for another mini-riot of some sort so we'll do certain things. As I say, maybe that's inevitable, but at least I would hope the committee might try and think creatively about other ways that we could operate.

I don't know what that is. It's giving people a forum to express their views in. It's finding ways that the public has true access to the Legislature somehow or other. I don't know whether it's anticipating a concern that there's a group—I don't know all the solutions. I'm just saying, before we focus on where we erect the barricades and where we cut off access here, at least challenge ourselves: Is there any other jurisdiction that has been successful in dealing with this in a more creative way? I suspect that if we don't do that, we will find professional solutions to this by professional security people that reflect the same security they might put on a drug lab or

a military base or something or other, when in fact we're here only because some people have voted for us to come here. We don't own the place, they own the place, and in theory they've got access to it.

1410

I don't have solutions for the committee other than asking that you spend some time thinking about the message we want people to feel about this place. Having said all that, I realize that there will be times when there is need for some significant security.

Another thing is that I accept there are some people who have some real problems wandering around this place—if you haven't yet had them in your office, you will—who are a threat to you or your staff, and we have to deal with that too.

I'll stop there, Mr Chair. My purpose in coming here was just to ask the committee to step back a little bit, and maybe they've already done that, in trying to think of some creative ways we can tackle this as well.

The Chair: Questions for the witness?

Mr O'Toole: Just briefly, we thank you for taking the time out of your schedule to appear here and to give us your insights and background and your experience here. I think it is kind of a unanimous thing that we don't want to portray—at least I don't think that we should portray—a sort of fortress mentality. I completely agree with you. Some of that's symbolically.

I personally disagree with the barbed wire fence and the bicycle stands out front there that act as a barricade. I think it's tragic. It destroys the façade of the building. I have a look at it, as a new person, perhaps from a small difference of view, but I think of the sort of subtle messaging, and even the way you suggested the fortress mentality is kind of deliberate. In fact, it probably was. If I look at the Christmas card, for example, that was sent out, it did have a wrought iron fence around it at one time, sort of an estate type. That's 1915, I think, that picture was taken. They had a fence around it, a wrought iron fence that made it difficult and probably channelled the traffic flow of people.

Now you could walk in from any direction, technically, and I see people running across the street. So it's very hard to manage outside. I think it's a difficult building, primarily because it doesn't have any traffic direction to it except for that one entrance coming in across the front.

But that point being made, that external part, I think there are trained police that regulate public places, whether it's Nathan Phillips Square, the CNE grounds, rock concerts, whatever. They're trained in crowd control and that kind of thing. I think that's what's outside.

Inside is probably where my biggest concern is, and for the same reason as yours: people wandering around. I haven't had that occasion of a stranger wandering into my office, but I can tell you one incident. This is a fact. This is true. I had come in one Monday morning rather early. It would be around 7 o'clock when I got here. The back door here doesn't open until 7:15, I believe, on the north side. That's where my office is. So I came around and came in the west door and walked down. The section I'm in is all being renovated. There were no windows, no boards, nothing; you could have just walked right in the window. And the place was freezing. I thought, Jeez, you

know, and that's just about the time that we were having the odd bit of threat around the area. So I called the security and said, "Gee, this is kind of lax, isn't it?" I mean, not that I care. I don't think anybody's after me. I haven't done anything. But you know what I'm saying? It's sort of, where does the responsibility rest?

I did speak to the Speaker about it, and I had a couple of calls on a couple of other internal incidents. I think there has to be some sort of responsibility to some one person, so that if I ask a question or Dave Cooke asks a question in the House or you ask a question, "Who made that decision to bring in the dogs to sniff for bombs?" or whatever they were doing, somebody has to be accountable. Would you agree that somebody should be accountable?

Mr Phillips: Yes.

Mr O'Toole: Would you like it to be the OPP or would you like it to be the Speaker or some other party?

Mr Phillips: It's a tough job for the Speaker because he or she is then put on the spot of being second-guessed by someone. I think the magic in it is probably, for maybe this committee, to try to figure out some ground rules that would help guide the Speaker on circumstances. I do think you need one person, otherwise we're going to be ducking it all the time.

Mr O'Toole: That's right, not getting any answers.

Mr Phillips: My judgement would be that the Legislature owes the Speaker a little bit of help in that decision, because if he's going to be second-guessed at every turn because there wasn't enough, there was too much, that's a pretty onerous responsibility. I guess the group's looking at some guidelines that you could all agree with, "In circumstances like this, the appropriate response is something like this," so that he's not out completely on a limb by himself.

Mr O'Toole: Just one last point, if I may, and I appreciate the very candid remark. In your definition I'm questioning: Do you see that there is currently a change of accessibility, a philosophy of openness? That was implicit in your opening remarks, that there is this shift to a bunker—is that your honest belief, that there's a real agenda here in this government to become bunkered, to become somewhat unopen? Do you think that is part of our agenda as a government?

Mr Phillips: I didn't mean it that way. As you proceed down this road, you are forcing yourself into that perception, I think. The permanent barriers out front, the chained-down barriers may very well be necessary but it's become a bit of a symbol for groups.

Mr O'Toole: Yes, that's a good point. I agree with you. If I may interrupt, I myself can't find out who made the decision to put the bolts in that new stone. That to me—you're exactly right—is symbolic. It's like the Christmas card is a symbolic gesture. It was done, I'm sure, in the best of taste but: "There's the fence, and now we've got the barricades. They were put up by this government. They're not open for business."

That's the siege mentality that I don't think we have control of. That definitely is not the agenda of, certainly, the members I've heard speak here, although we would respect the need to have some sense of screening or access to the building. So I'm making a statement, and

secondly, do you think there needs to be some sort of controlled access to the building, or should people just walk in the west door, the south door, the north door at random—it's their building?

Mr Phillips: I'd like to know what other jurisdictions can do. I suspect that uncontrolled access to the whole building is probably not in the cards in the years ahead, and then it's a matter of where you draw the line between there. But you will have somebody come to your office who will threaten you or your staff before you're finished here.

Mr O'Toole: I hope not.

Mr Miclash: Gerry, I like your comments about the moat. I hadn't actually thought of it that way before, but you're right. I can remember the first time I got off the subway to come to work here. The very first day I looked up at the building and thought, "Wow, what an intimidating place." You're correct.

Something I'm going to wrestle with as well as we move through—and you've already mentioned this—to other jurisdictions is to take a look at the actual access. That's an important one. Mr O'Toole has brought that up already and you've answered his question about that.

I'm sure you've been to Ottawa and have entered their system. Have you felt intimidated through their system or have you felt that's something that was welcoming to you when you went into that building? How would you see our system compared to that? Do we go that far? Again, that's something I'm going to wrestle with.

Mr Phillips: It is a problem there. I'm from Scarborough and we've got a city hall that is very open, very accessible. There are concerts there every Sunday and there are people coming and going all the time. The access to the offices is closed but there's a tremendous feeling of openness. When you go to the offices, they've got glass doors and you need a little plastic access card. The elevators are the same thing, or at least I think they are; I can't quite remember. But it's a combination of complete openness and reasonable security.

Mr Miclash: I think you're right in terms of creativity. We're going to have to be creative when we take a look at this. We've heard a couple of times that maybe some areas should be closed off, some areas should be open, but it's going to take some creativity to ensure that happens.

The Chair: Any other questions for Mr Phillips?

Mr Dave Boushy (Sarnia): I'm just sitting back here, listening. Are we exaggerating a bit? I know I've had a lot of people come to see me since June 8, I would say close to 100 people from my riding—average citizens—and they have never complained about security and how they were treated. They've always felt it's a good place to come in and they were free to come in and go out. The complaints I receive of course are from those people who were picketing and all that.

Do the average citizens in your riding complain to you, when they come and see you, about entering this building? I haven't received any complaints.

Mr Phillips: No.

Mr Boushy: So what are we talking about, "The place is just like a fortress and it's not a comfortable place to come in"? I'm confused. You look at the Parliament Building in Ottawa. As soon as you see the building, it strikes you the same way as any other public building.

Mr Phillips: I'll try and help you a little bit. As soon as word is out that there's going to be a demonstration out front, I think the barricades go up, and anybody who comes then feels, "Gee, I was just coming here to let people know how I felt about something or other and they've got the barricades up." I was with a bunch of students who were over from the U of T, a pretty mild-mannered group, but the barricade was up. There were, I don't know, 20 security officers behind the barricade; nobody could get over it, blah, blah, blah. I think that's where you start into the siege mentality.

Mr Froese: Thanks, Gerry. I didn't hear all your presentation, but I appreciate from you, being here a lot longer than us on this side anyway, the caution to go easy and to think creatively and think about what we're doing here. I'd like to reiterate I really believe this is not a one-party issue. It's all of us together.

I like the comments you made about Scarborough city hall—I guess that's what it was—and Nathan Phillips Square is the same way. I've been there and the Niagara peach celebration was out on the square. The openness and access to that area was fantastic to promote the tender-fruit industry of Ontario. So that was great. I don't know if we can do that here or not and allow that, or do we allow it or something like that, but I think that's one way of doing it.

It's good to pull back a little bit and review the whole situation. You made some comments on it, but again, I take it at face value and we don't want to go to that fortress-type thing. I totally agree with you. On the other hand, what do you do when there are demonstrations, and they're becoming more violent? It appears to be. Some can. If we could ensure that the people who are doing demonstrations were not going to be violent, I think that whole barricade and everything could be taken down. So those are some of the concerns that we have to address. But just a statement—I appreciate your, "Slow down a bit, pull back," and there are other issues here. Thanks a lot.

Mr Phillips: Good luck.

The Chair: Thanks, Gerry. That completes the business we had planned for this afternoon. I just have one thing to remind committee members of. We resume sitting on this committee next Monday at 10 o'clock. First of all we have the Legislative Assembly occupational health and safety committee, and then at 11 am representatives of the press gallery will be here to express their views on this issue.

Thank you very much, committee members, for your help and cooperation this week. This committee stands adjourned.

The committee adjourned at 1424.

CONTENTS

Thursday 1 February 1996

Security of the legislative precinct	M-39
Dominic Agostino, MPP	
Joseph Cordiano, MPP	
Gerry Phillips, MPP	

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

Hastings, John (Etobicoke-Rexdale PC)

*Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions presents / Membres remplaçants présents:

Christopherson, David (Hamilton Centre / -Centre ND) for Mr Silipo

Clerk / Greffière: Freedman, Lisa

Staff / Personnel:

Sibenik, Peter, procedural research clerk, Office of the Clerk

2011
C20
-L20



1-800-387-2373

M-6

M-6

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 5 February 1996

Standing committee on
the Legislative Assembly

Journal des débats (Hansard)

Lundi 5 février 1996

Comité permanent de
l'Assemblée législative



Security of the legislative precinct

Sécurité de l'enceinte parlementaire

Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Monday 5 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Lundi 5 février 1996

The committee met at 1007 in room 228.

SECURITY OF THE LEGISLATIVE PRECINCT

LEGISLATIVE ASSEMBLY JOINT
HEALTH AND SAFETY COMMITTEE

The Vice-Chair (Mr John Hastings): The first item this morning deals with health and safety. This afternoon the press gallery people won't be here so we only have till noon today—11, actually—and then we don't meet again until Thursday at 10 am. Okay, folks, for the record would you like to identify yourselves and proceed. Then we'll have questions afterwards.

Mrs Mary Edwards: I'm Mary Edwards and I'm one of the co-chairs of the joint health and safety committee for the Legislative Assembly.

Ms Diane Fenech: I'm Diane Fenech and I'm also a co-chair for the joint health and safety committee.

Mrs Edwards: Mr Vice-Chair, members of the standing committee on the Legislative Assembly, the presentation by the Legislative Assembly joint health and safety committee is being made by the co-chairs, as we've introduced ourselves. The committee appreciates this opportunity to appear before you. The document you have before you was prepared by the joint health and safety representatives from remarks and comments gathered from Legislative Assembly staff.

The joint health and safety committee, which represents the employees of the Legislative Assembly, has heard many concerns regarding security expressed to its employee and management representatives. The representatives have agreed that there is a need to relay these concerns to the standing committee on the Legislative Assembly for its consideration when reviewing the security issue.

This is being done pursuant to subsection 8(10) of the Occupational Health and Safety Act: "A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his or her findings thereon to the employer, the workers and the trade union or trade unions representing the workers." We are submitting it to the standing committee as it is the body of the Legislative Assembly, our employer, assigned the responsibility to conduct a review on security.

Legislative Assembly employees who work in the main building and the Whitney Block five days a week, 52 weeks of the year, are becoming increasingly concerned about their safety. Their experiences and concerns, as outlined below, are as a result of the changing public reaction towards governments. These changes have been

demonstrated by the bombing incidents in Charlottetown and Oklahoma City this past summer and the number of bomb scares, including the one on opening day that compounded the existing crisis situation related to the demonstration that day.

The employees of the main building, which is the Legislative Building, felt secure when the building was first locked against the demonstrators but became concerned when the need for evacuation arose. Since everyone was being evacuated through one door of the Whitney Block, the process was very slow and anxieties rose as people wondered if in fact a bomb might explode before they were outside. Anxiety levels rose in the Whitney Block as employees became aware that they had been locked in with no apparent escape route should an emergency develop inside the building. People who tried to enter the building after lunch and others trying to leave the building found all doors to be locked, and one chained shut, except the door from the tunnel in the basement of the building. Security could not be found except one security officer in the lobby near the elevators on the first floor. Staff questioned who would remove the chains and unlock the doors in the case of a second crisis such as a fire, medical emergency or, as happened, a bomb scare.

Announcements over the public address system were confusing. Staff were left wondering whether they should or should not evacuate, and many did not leave the building because of the message's lack of clarity. Could they evacuate quickly through a single door? Where is this door? Where is the security staff to help staff evacuate safely?

When employees from both buildings were finally evacuated through the freight entrance of the Whitney Block, there was no one directing them to safety beyond the exit. Whitney Block employees have also expressed to their representatives the concern that security appears to be inadequate since the Premier now has an office in their building. Presently, within the legislative precinct there is only one security guard located on the first floor at the west door. The only other visible security can be found at the entrance to the tunnel connecting the Whitney Block and the legislative building.

Ms Fenech: Almost all employees are prepared to accept the badge system, but there appears to be no consistent policy for their use. On opening day, people who had left the building but had their badges with them were not allowed access back into the buildings. Therefore, the staff questioned why they were obliged to wear badges. Some people dealing directly with the public prefer that their names not appear on their badges. This

attaches a face to a name and could put that person in a threatening situation.

We suggest the following:

(1) Emergency plans should be put in place in both buildings immediately and communicated to all staff.

(2) There should be consideration of more than one crisis situation happening at any one time. The plans should not place people in an unsafe situation should a second crisis arise.

(3) Scripted announcements should be used and be part of the emergency plan. They should be clear, unambiguous and audible throughout the building.

(4) Standard procedures should be in place regarding the use of identification badges.

(5) Personal information should not appear on the badges.

(6) All persons not wearing a badge, whether visitor or staff, must be stopped and requested to register. Those persons wearing their badges should be allowed to proceed.

(7) Increased security should be put into place in the Whitney Block.

(8) Security should be on duty and available to assist staff in crisis situations.

(9) Attention should be given to the issues of liability in the event of a disaster.

We are pleased that you are addressing the security issue, as safety is an important concern to us all.

Just as a closing comment, with the possibility of a strike by the OPS employees, staff are now concerned, given the rumours that they are hearing.

The Vice-Chair: Thank you very much for your presentation. Questions?

Mr Gilles E. Morin (Carleton East): Did you have the opportunity to discuss this issue with anybody else before you met with this committee?

Mrs Edwards: This report went to the management advisory committee, which is MAC, which is our body—

Mr Morin: When was that? When did it go?

Mrs Edwards: November, December, I believe, it went to them.

Mr Morin: Did you have any reply?

Ms Fenech: No.

Mrs Edwards: All we got was that the notice came back that the Speaker would bring the concerns. We didn't know whether he was going to bring the report as such; we weren't told in what way.

Mr Morin: The other question: You mentioned that you would like to see the badges without a name appearing. What do you suggest instead?

Mrs Edwards: My understanding from the OPS system is that the computer system they have has the picture in it. So officers can bring your picture up at any time without using your name. Or you can assign an ID code number, like a pass code number, and the number can also be used with the computer.

Mr Morin: So it's feasible?

Mrs Edwards: Yes.

Mr Morin: And security would be pleased with it?

Ms Fenech: We should hope so.

Mrs Edwards: Actually, they've started doing some of them now.

Mr Morin: The other question: (9) "Attention should be given to issues of liability in the event of a disaster." What do you mean by that?

Mrs Edwards: They're saying if, say, there was a death that occurred, somebody needs to be concerned that those things could be affected if somebody was seriously hurt or a death arose. There's another aspect we want people to be familiar with.

Mr Morin: But you're all insured, aren't you, through your plan?

Mrs Edwards: Yes, but I think it would be to make sure that they—the employer in this case—understand they should be covered in certain types of circumstances.

Mr David S. Cooke (Windsor-Riverside): First of all, thanks very much. How long have both of you worked at the Legislature?

Mrs Edwards: Six and a half years.

Ms Fenech: I've been here nine.

Mr Cooke: Where?

Mrs Edwards: We're both in the Whitney building.

Mr Cooke: You're both in the Whitney Block. Some of the events that are taking place these days seem to be happening with a little more frequency. You've both been here long enough to know that they've happened in the past. There seems to be a higher level of concern in your presentation today than, say, there would have been a few years ago. One of the things that I'm always concerned about on these things is that because of one incident—and it was a bomb threat on throne speech day, and there was a demonstration out front that turned ugly. I have my own theory on why it turned ugly. But there was a bomb threat. We've had bomb threats around this place for quite some time. So I get concerned when people start talking about spending large amounts of money and putting large numbers of new processes in place to deal with something that, in effect, didn't happen. I'm not suggesting that everything would be valid if there was in fact a bomb, I'm not suggesting that we ever want to get to that point, but it was a bomb threat, and those things have happened all the time over the years.

Mrs Edwards: I think one of the problems is that staff are now aware of other situations, different places, and they're getting a little antsy about their own security. As well as the representatives on the committee changing, staff change, so their concerns change as time goes on. There's maybe a younger population on staff now, with families at home, who are more concerned for their security than at one time as opposed to now. Diane, do you have anything else to add?

Ms Fenech: The way I see it is, mostly we don't want a lot of procedures to be changed; we just want what they're doing to be more straight out. Like the fact of the announcements over the PA: They weren't consistent, they didn't give good instruction, people weren't sure what exactly they should have done. Then when they were told to leave, they went downstairs and found doors locked that shouldn't have been and not manned, and no direction given. It's very hard to see what you're going to do.

Mr Cooke: I totally agree that those are difficulties that need to be addressed, although no matter how ingenious the staff would be, I'm not sure that you can

have a list of scripted messages to use when not always are there going to be—like, how would you have had a scripted message for throne speech day when we haven't had maybe a circumstance where there was that level of a demonstration out front at the same time as a bomb threat, the same day as guests all coming in for throne speech day? The worst thing that could happen is that you have so many rules and so many scripts that you start following rules and scripts that don't apply to that particular situation. Common sense is what we should be trying to—it's a phrase I don't like to use any more.

1020

Ms Fenech: It comes in handy, yes. We also were thinking that maybe, instead of saying it's a thing, you would just have a code like they do in the hospitals or even in department stores, that security is at a level and such a number. People would know by that announcement that they should take care and maybe get ready to evacuate. They would already know by which door they would leave before anything got out of hand. It would take care of the staff that way. But it must be communicated beforehand and just a simple plan put in place, because it is the same with the fire drills and stuff, it took a while to get them going again, but once they did, they are starting to work quite efficiently now.

Mr Cooke: Let me ask one other question and that's to do with these name badges. I personally would find it rather strange to have an identification badge where I couldn't identify the person who had the identification badge. These badges are not just for security; these badges are also for people who are coming through the building, for other employees, so that people know who's in the building, and if they work in the building, know who they're talking to.

But forget that. If you had this other approach you're talking about and then you had to buy the technology to read the imprint that would then call up your picture, I guess I'd want to be convinced that there has actually been a problem with the current badges before we start spending several hundred thousand dollars or a few million bucks for new technology when we don't have many dollars at all. While I understand the concern you're expressing, how many incidents have there been to show it's a valid concern, that because somebody has got their name, they've actually been stalked or harassed?

Mrs Edwards: I'm not sure how many concerns there have been. We're aware that presently the pictures actually are on computer, so there's no change in technology at all there.

Mr Cooke: No, but you'd have to have all this picked up at each of the entrances.

Mrs Edwards: The computer systems are at the entrances of this building and there is one in the Whitney building. Certainly there isn't anything in the basement.

Mr Cooke: And that system has got all of our pictures in it?

Mrs Edwards: Yes, that's what we understand.

Mr Gilles Pouliot (Lake Nipigon): You'd have to buy the suit to go—

Mrs Edwards: When you get your hair cut, then you need a new picture, they tell you.

I'm not sure how many concerns, as I said, but I understand the other technology is there if you wanted to use it. Some staff currently now have passwords put on to their badge system, the reason being if they lose them or they're stolen, if somebody else can access them, they've put passwords on them, and that's what the number is used for at this point.

The other thing is that if you need the names on it, maybe just take the branches off so people can't relate you to a branch as well. The staff—

Mr Cooke: I'm not going to let that one just go by. I want to know why. How many problems have there been that would actually point to a problem?

Mrs Edwards: I don't have exact numbers. These were just from concerns that staff—when we asked them what their concerns were, this was one of the ones that came up by a number of people. Whether they've actually been harassed or whatever the circumstances have been, they haven't actually told us.

Mr Cooke: I think that's an important part of it. I don't think we should start making changes or suggesting changes unless we know there's a problem that those changes are addressing, and as health and safety reps, I think that should be part of your focus, that we don't want to put in place new rules or new procedures that address something where we don't even know if there's a problem.

Mr John O'Toole (Durham East): Thank you very much for an informed presentation. You certainly have a point of view. I really don't have too many questions, but I would imagine my main concern is, of course, the badges and the questions that have been asked. I would ask you one thing: In your particular block, do you see any reason to have tours or visitors of a casual nature? If people are on business, I suspect they would have an appointment. There could be prearranged information at the desk.

Mrs Edwards: In the Whitney building?

Mr O'Toole: Yes.

Mrs Edwards: The precinct is only the first three floors, so we can only speak to those three floors. At this point, I don't see anything unless you have your badges; that's just the way the offices are set up there. There's no need for tours of the area. It's just basically we deal with legislative staff or members or members' staff. The only other concern we would have is we have people in for interviews in certain areas, or picking information up, but there could be a control system set up for that in the building, which isn't there right now.

Mr O'Toole: So you think, given the badges that exist today and the security in place, instructions being given to visitors, interviewers or friends, whatever, that the appropriate precautions could be taken right at the desk where they're being instructed to attend before their meeting.

I guess the concern is—this is perhaps an unfair question but the whole issue of regulating entrance into this building—once they get inside here, they can go a lot of different places. Do you think there should be more strict control of entry and access to the building? That's the balance here. It's a public place and everyone has the right to come to the Ontario Legislature sort of thing. Do you have any comments on that?

Ms Fenech: I feel there has to be a bit of restriction, only to keep the employees safe. As in the Whitney, there is public going in to visit some of the members on the first floor, so they should have unlimited access to get to that member, but meanwhile, on the second and third, it's all staff, employees of the Legislative Assembly and some protection must be made, because nobody questions anybody walking around there unless you call security and ask them to come check them out.

Over here in the main building I think it's pretty well regulated, but still there are people drifting around near staff offices where they should be questioned or at least registered before they go and see that office, just to have some control.

Mr R. Gary Stewart (Peterborough): I have a couple of questions. I just want to pick up on one word that you said, "unlimited" access to that first floor. You just made a comment. If bombs are on the first floor, the rest of the floors above it come tumbling down, unfortunately. What do you mean by unlimited access? Do you feel that people should just, as Mr O'Toole said, wander in and out of that first floor over there any time, any day?

Ms Fenech: No, that's what we're trying to stop.

Mr Stewart: All right, so you're totally against open access to these buildings. I'm saying "total." I use the words "total access." So you want some limited access.

Ms Fenech: No, like you say, it should be public, but still there should be some concern that we have some kind of safety, because over in the Whitney Block there is one security guard on the first floor and he's got to take care of three floors. Most of the time he's just sitting at the desk and that's all he ever does. We don't see him roaming around or anything.

Mr Stewart: I'm in full agreement with you. I'm certainly not arguing against you, because I think it should be controlled access. One of the things in the business community is that they have employees going in one door or two doors and they then have the public or visitors come in the main office, register in and out and all the usual things. At the Whitney Block, could employees or anybody go in and out any door?

Mrs Edwards: Yes.

Ms Fenech: Entrance, yes.

Mr Stewart: What are your thoughts on controlled access, then, say for staff? If staff came in one or two doors only and then the other one or two were limited to visitors and other people, could that be acceptable to your group?

Mrs Edwards: Certainly. Anything is better than what we have.

Mr Stewart: You don't think they would say, "Why are you telling me I may have to walk half a block to get to my office?" You don't think that's a problem.

Mrs Edwards: No, and I think one of the hardest ones to control could be the tunnel from the subway, or the entrances.

Mr Stewart: I want to go back to the identification badges. We were talking about personal information on it, but you've also got number 4, "standard procedures." What are you talking about there, how they're issued, how they're displayed?

Mrs Edwards: Just even asking for them and checking to see if you have them on. In the case of the Whitney building, no one asks you—even the security officer on the first floor doesn't ask you. When you go from the Whitney building to the main building, you're asked, but when you come from the main building to the Whitney building nobody asks you.

1030

Mr Stewart: If you had limited access and it was all through one door—

Mrs Edwards: That would control some of it.

Mr Stewart: —or two doors, then that would solve that problem.

Mrs Edwards: Certainly.

Mr Stewart: Okay, thank you.

Mr Tom Froese (St Catharines-Brock): Thank you very much for making your presentation. There's certainly no hidden agenda on the questions I ask; it's just I need some information.

In the presentation here, did you ask all departments in the Whitney Block or was it information forthcoming? What transpired, was this document because of what happened since Parliament opened, or have these concerns been raised before that you aware of?

Mrs Edwards: Some have been before, but I think the idea of the report was based on opening day where it really came to the climax. All staff were asked if they wanted to participate. It wasn't limited to strictly certain departments; it was from staff from both buildings.

Mr Froese: Is there an emergency plan in place when something like opening day occurs? Is there a procedure? From my former life in the private sector, I'm very much aware of your committee, because at first hand in the branch of the financial institution I was working with we worked hand in glove with health and safety, the committee we headed as well. I'm asking you because usually there's a plan in place, especially in a financial institution. There are security procedures. We have some of the similar problems of security and safety because of bomb threats, the same type of thing. Is there a plan in place now and is it regularly gone over with the staff? Do you have meetings where the management team, as it were, sits down with yourselves and goes through the staff, department by department, what happens in a situation, what you do?

Mrs Edwards: We can't comment on the Legislative Building. As far as the Whitney Block is concerned, there is a process for fire and basically the same process is used for every other type of emergency at this point. There is an evacuation committee within the Whitney building that's concerned with the whole building. It's not just the Legislative precinct, it's Natural Resources, cabinet office as well. They're in the process right now of starting a new committee because there have been changes in the person looking after it and we'll be getting ready to go over the fire plan as well and probably update everybody on the evacuation process that you can use for everything. But there is communication in the Whitney building.

Mr Froese: There is a plan in place—whatever that plan is—for emergencies of the type we're talking about, or is there not?

Mrs Edwards: Not to the—

Mr Froese: Not clearly defined?

Mrs Edwards:—extent where they lock the doors and they chain the doors that staff are aware of, no. That's what happened in our building.

Mr Froese: What happened on opening day was different than what the procedure should have been according to what's in place right now?

Mrs Edwards: Right.

Mr Froese: All right.

Mrs Edwards: I think that's the problem with the Leg building too. Staff were asked to evacuate through the Whitney building. They're not familiar with the area, so it was a different type of circumstances that I think still needs to be communicated as an alternative type of plan for both buildings so they know where it is.

Mr Froese: Do you know how many entrances there are into the Whitney block?

Mrs Edwards: Nine.

Mr Froese: Nine. Thank you very much.

Mr Bill Grimmett (Muskoka-Georgian Bay): I also have an office—actually it's over in the Hearst Block, but I take it that's what you mean by the Whitney Block, all of those related blocks?

Mrs Edwards: No.

Mr Grimmett: You don't. There are nine entrances into Whitney, and there are more into Hearst, Macdonald etc?

Mrs Edwards: Right.

Mr Grimmett: Do you know how many there are in the whole group over there?

Mrs Edwards: In the Macdonald Block? I have no idea.

Mr Grimmett: My questions relate to recommendation number 6, and I'd like to hear the ladies comment on whether there has been a significant change in the consistency of the application of requiring some kind of identification. Have you noticed any change since the incident in September?

Mrs Edwards: In our building, no.

Mr Grimmett: I remember a day my wife came to visit me. I was asked three times when I went through the tunnel for identification, and my wife went through the tunnel twice at separate times that day and was not asked for identification. I thought that was quite ironic. You'll notice I'm wearing my identification now.

Ms Fenech: Were you going to or from the main building?

Mr Grimmett: Both.

Ms Fenech: That's strange.

Mrs Edwards: No. Actually, I went to the main building the other day and I was asked to show mine and two people behind me, coming from the Whitney across, weren't asked for ID at all.

Mr Grimmett: That's one of the concerns I have: the consistency of application. Do the employees in the building share that concern?

Mrs Edwards: Yes. They get a little frustrated because sometimes they forget their ID and they have to run back upstairs, yet they watch someone else walk through who doesn't have ID. They're concerned that there needs to be some consistency in the building in how it's used.

Ms Fenech: Also, people wearing badges have been harassed, that they don't—I don't know—for some reason believe its their badge or something and don't want to let them through. What's the sense in that?

Mr Dave Boushy (Sarnia): You mentioned fire drills. Do you have regular fire drills or evacuation plans on a regular basis to evacuate the whole building, dry runs? Are they effective? Do you have them, and how often?

Mrs Edwards: With the fire drills, they only have to test an area; they don't have to do the complete building. Last year they tested a certain area to make sure it worked, but there has not been an entire building evacuation in the last year, that I know of.

Mr Boushy: You don't evacuate the whole building in a dry run?

Ms Edwards: They haven't had to do a test that way, a test of the whole building. They did a section just to see how the process worked.

Mr Froese: One question I should have asked before. Is your committee mainly for the Whitney Block?

Ms Fenech: Both buildings.

Mr Froese: What about the other buildings, the Hearst Block, the—

The Vice-Chair: This is just the assembly.

Mr Froese: Just the assembly? All right.

The Vice-Chair: Any further questions? Mr Botticelli.

Mr Rick Bartolucci (Sudbury): Thank you, Mr Hastings. It's "Bartolucci," but that's all right; it took me 10 years to be able to pronounce it correctly.

As I listened to your presentation, I'm fearful, because you're occupational health and safety and what I hear is that there really is no awareness of emergency measures to the degree you would think acceptable. Is that correct?

Ms Fenech: Yes.

Mrs Edwards: Fire's good in the Whitney building. The other circumstance is I think where the problem is, and as I said, we can't comment on the Legislative Building.

Mr Bartolucci: But there is no awareness in the Whitney Block?

Mrs Edwards: No.

Mr Bartolucci: And there should be.

Mrs Edwards: Right.

Mr Bartolucci: With awareness comes some type of accountability, because to have input into awareness, there has to be some input into the accountability factor after that. What do you see your role being with regard to the evolution of emergency plans appropriate to different instances?

Mrs Edwards: At this point, as I said, the Whitney building is working on coming up with its evacuation plan and we do have input into that representative of joint health and safety. That's one way we'll have some input, as well as the employees certainly bringing their concerns. It's a matter of employees bringing their concerns and trying to get something done.

1040

Mr Bartolucci: A final question, going to the comments Mr Froese was making. There has to be appropriateness attached to any type of plan. What do you see your role being with regard to the appropriateness of a

plan? How do you see it working? How do you see the improvement taking place?

Ms Fenech: I hope they would ask us for our comments and suggestions and plans and that everything will be communicated so we can find the best way to communicate it to the rest of the staff and educate them so everybody will have a responsibility to look after each other and, in the case of an emergency, we all are safe. That's the bottom line.

Mr Cooke: I'd like to get back to this part of it. You're being consulted now in terms of the plan for Whitney Block, is that right?

Mrs Edwards: We're on the actual committee. We have representation on the committee. The committee hasn't started to meet yet.

Mr Cooke: But you're part of that plan, so that process is satisfactory to you in terms of your involvement.

Mrs Edwards: Yes.

Mr Cooke: I want to get an idea of the relationship of the joint health and safety committee with management. You said earlier that you wrote to MAC and you haven't got a response. I know you're not unionized, but you have your joint health and safety committee. What is the relationship that committee has with management where some of these concerns would obviously be voiced? Do you meet with anybody on management side?

Mrs Edwards: No. The joint health and safety is a representation of employee and management, and it's an equal representation across the board in this case. Because our reporting relationship is to MAC, we felt—

Mr Cooke: Who's on from management?

Mrs Edwards: Myself, and there are representatives from each of the divisions. There are four employee reps and four management reps, plus the alternates; one management and one employee rep from each of the four divisions.

Mr Cooke: You're from management and you're non-management. This part of it I think is important. What have you done as one of the management reps to take the concerns of management employees and non-management employees—it seems bizarre to me that the approach would be to write a letter to MAC when there are management people actually on the joint health and safety committee. I would assume you wouldn't have to write to management but could communicate directly to management the concerns about health and safety as they relate to security.

Mrs Edwards: We've also addressed our concerns to Thomas Stelling, who's in charge of security. Security is only—the health of a person is a small aspect, and we have no involvement in the security part in the other building. We've asked to appear before MAC to bring this report to them, and there was no indication they needed to meet—

Mr Cooke: What have management reps on the joint health and safety committee done to work it up the line in management? The reason for having a joint health and safety committee with management and non-management is so that management can take the appropriate action and be fully informed of the concerns of all the employees. I'm just a little confused, with a committee that has

management representation, why it would be necessary to write to management, which is basically what MAC is.

Mrs Edwards: I guess it was the process that's been going on all along. We've talked to some of the people in higher management. They have the same concerns we have, but the problem is trying to get something done in some cases.

Mr Cooke: Who have you talked to?

Mrs Edwards: I've talked to my director and I've talked to other—

Mr Cooke: The director of? I don't know which branch you work for.

Mrs Edwards: Human resources. We've talked to other branch people along the way. We've talked to the security aspect in terms of one of the MAC members, but we're waiting for them to help us do something because we have no power other than to direct them what they need to do.

Mr Cooke: You understand my concern here. When you say "have no power," management has all the power. They're not talking about a unionized area—

Ms Fenech: But the direction must come from MAC, which is all directors. The management people on our committee are just senior management; they don't really have much say or power to do—

Mr Cooke: Well, senior management has some say. The other option, I guess, is to write to the Board of Internal Economy. If what you're saying is that the management reps on the joint health and safety committee have no authority to act on issues of health and safety, then the question is, is the health and safety committee properly constructed? Maybe there should be management reps who actually have some power to execute recommendations that come from the committee.

Ms Fenech: It's all in the hands of the directors of the branches on MAC and nothing can be done unless you're one of them, so you're down to the five members. We can't deal with the issues all the time.

Mr Pouliot: Good morning. I certainly appreciate the candour: "Nothing can be done unless you're one of them." I think it's sort of symptomatic. Those are at the director level?

Mrs Edwards: Yes.

Mr Pouliot: Wow, director. That's about \$85,000 to \$90,000 a year, right? No higher than that?

The normal flow of traffic: When I look at the recommendation, I'm trying to find out—and I need your help, please—what is your jurisdiction? How far can you go in recommendation? It's fairly straightforward, but in terms of meat, in terms of substance, it brings more recommendations. I'm not saying they're feeble, inconsequential, but may I suggest that the reading is too easy.

You have on the one hand a request from the people that we address the security and safety of the system here. Then there is a focus about the Whitney Block. Once we go into the real world—and, Madam, you seem to know the ins and outs of the building; you speak with confidence, and you must have spent a lot of hours looking at this—there's a normal flow of pedestrian traffic. It's a web, it's intricate. You can reach the subway without leaving the buildings, right?

Mrs Edwards: Right.

Mr Pouliot: Bon. The subway's on University, is it not?

Mrs Edwards: Yes.

Mr Pouliot: Oh, that's a long way. And you can go to the Ontario savings office without leaving the building, right, and you can exit on 900 Bay Street? And good citizens and taxpayers use the building as a convenience if it's cold, if it's windy, as you head towards the renowned Bay and Wellesley situation, which is one of the windiest spots in the city, is it not?

Mrs Edwards: Right.

Mr Pouliot: Bon. So people will use the convenience of the buildings. Even though I didn't have a badge, I would feel I'm paying for all this. A cynic may even suggest when they look at all the government buildings around them and ask, "Guess how many people work there?" that it's "Not enough," and other people may say, "Well, about half." How many thousands and thousands, tens of thousands people per month, per day in fact, use the web of government buildings? Would you have an idea, ball park, grosso modo, any figure?

Mrs Edwards: No.

Mr Pouliot: And this also of public service: You have the mineral office on the second storey, you have human resources on the areas that connect there etc. You have the smoking gallery, because the government does not allow the sanctity of its offices to be polluted by cigarette smoke. How do you reconcile that? I would be upset big time if I were a taxpayer going to get my driver's licence and I would have to produce a badge, because it's one of the busiest offices in the province of Ontario. That's my first question.

1050

The second one is, when you say "added security" you obviously feel—let's assume that everyone is employed to the maximum, that Harry and Jane for so many hours at their designated workplace will constitute a day's work. There are only so many bodies, notwithstanding that they're asked to be amateur psychologists; they're asked to do this and that. The thing is that you need more resources. Any time when there's a recommendation you don't need fewer resources; not every time, but most times you need more resources.

Some of the members opposite have mentioned, and the point is very well taken, that it's a judgement call. On the one hand, you don't want to restrict accessibility to citizens. On the other hand there is a sense, in view of what has happened over the years—it may be a sign of the times; I don't know that—for more and/or better security. The next time you come here people might be asking you about a timetable, a step-by-step approach, and some dollar figures attached to it. Do you feel that you have the jurisdiction—I sense not; you have the capacity but you don't have the jurisdiction—to come up with answers to the second question, which is a timetable and money attached to it?

Mrs Edwards: In terms of your second question, no, I don't think we can. We can give suggestions but I don't think we can do a timetable or anything in terms of your second question.

Mr Pouliot: So you're asking us to identify the problem—ping pong—and then you can come back with

the answer; and we've asked you to identify the problem, but now for the cost factor we would have to give you the problem, what we want done.

Mrs Edwards: I don't know.

Mr Pouliot: You're not going to win either way, by the way.

Mrs Edwards: No, I know.

Mr Pouliot: Let's go back to the first question. This is the identification of the problem. I must apologize first for my methodology. It's not that it's inverse, but it's a little different. I make the same mistake in many languages.

The flow of traffic, you don't seem to have a good handle on it. It doesn't address that. It addresses the tunnel. It pinpoints the tunnel between Whitney and the Leg.

But it's all connected. One is just as important as the others. You have government offices, not all over but certainly people connect back and forth. What if we were to talk about safety, if we were to talk about jeopardy? Is it not just as existent there as it is elsewhere?

Mrs Edwards: Yes. I think the problem is that we didn't look at—we're only concerned with our employees, although I think the idea is you have to go in a broader sense. I've talked to employees in other areas, in different committees, in health and safety, to see if they have some ways we can work around it. The concern is the LA staff at this point. There was no consideration for staff coming from, say, the Hearst building or the Macdonald Block when they prepared this.

Mr Pouliot: But in terms of the LA, I've noticed, since the new administration took office, where barricades have been cemented in place to keep the citizens of Ontario out of their building. I've noticed that with great sadness with my very eyes. It's become sort of a bastion. People in fact have called my office saying, "I hope our lines aren't being tapped"—I was certainly shocked—"and what about access to the building etc?" I mean, I've heard words mentioned that I have never heard before, Madam, people going to the extreme with the qualifications of the present regime, the present administration. That disturbs me, the ability—

Interjection: The revolution.

Mr Pouliot: I'm coming to the revolution.

People talk about, it's time for a prise de la Bastille. I say: "No, no, now take it easy. Come and see me. You have access to the building." There's been a great deal done here. We don't see as potential terrorists or as potential criminals any taxpayers, contributors who come to the door. The poverty vigil outside does not bother me, does not trouble me. Because they don't have a badge they should still have access, with the few dollars they have, to the cafeteria to have a hot chocolate like us so that they can go back to the vigil to do what they do best and to await the present administration.

I have mixed feelings—

Mr O'Toole: What's the question?

Mr Pouliot: —about the security system. I really do have mixed feelings.

Mr O'Toole: Mr Chair, point of order: If I may, through the Chair, I would question the member opposite if he has a question. I'm serious. I don't like to trivialize

process and we've been going on, we've given several clutch phrases. My point, and I'm asking a question: Do you have a specific question? Skip the rhetoric. I want to hear your question. We've had 10 minutes of rhetoric here.

Mr Pouliot: First of all, I have no lesson in anything to take from you. Let's get this very straight. If you don't like my terminology, my friend, tough.

The Vice-Chair: Mr Pouliot—

Mr Pouliot: I've made my question. The subject matter being addressed is far too complex. Si tu ne comprends pas — comprends-tu, bonhomme? Ah, tu ne comprends pas.

M. O'Toole: Qu'est-ce que c'est, là ?

M. Pouliot: «Qu'est-ce que c'est, là, là ?»

The Vice-Chair: Question, please.

Mr Pouliot: The subject matter is too complex, first of all, to be interrupted by the likes of him.

Interjection: Hear, hear.

The Vice-Chair: Questions, please.

Mr Pouliot: I've asked my two questions. I'm trying to get the answers. It's not a matter of black or white. It is a tedious matter and a compromise has to be reached. I would like to see some recommendations and I'm asking for a timetable attached to them.

Mrs Edwards: I said we couldn't do a timetable. I think this is going to take more than just your group and our group. There are a lot of groups that need to work together to come up and study it. It's not just something that we can just do ourselves.

Mr Cooke: I just have one suggestion, that this is a particular area where I think there have been a number of points raised that we will want to, when we write our report, make recommendations on. If I might suggest and just get a very quick reaction from the two deputants, we would want to make a recommendation on the role that employees in the legislative precinct have in terms of being involved in the development of policy, and the lines of communication that seem to be fairly weak, in terms of existing policy, to the employees of the legislative precinct.

Those are just a couple of areas, but I think you've made several important points: at the very least that employees, management or non-management, should have a right to know what the rules are and that they're working in as secure an environment as possible; and if there are suggestions, we've got to see some changes in the lines of communication. It's bizarre to me that the management reps on the joint health and safety committee have to write to the management advisory committee. There surely have got to be better communications available to management on the joint health and safety committee than that.

Those are just a couple of areas, but I think this is a significant presentation that we'll need to make recommendations on.

1100

Mr Froese: I fully agree with Mr Cooke, but I'd like to know a little bit more about the procedure. I'm just as much concerned. That's the way the joint health and safety committees are worked where there are management and employees on it. It's that way across the

province. But the procedure where we were at was that the recommendations were written by the committee. I was in a branch office of our organization. It came to us; it came to myself as manager and then a copy went to the senior management of our organization and I had to respond within 21 days.

Within that 21 days I had to respond with what my feelings were if things were going to be changed or my recommendations had to be changed. The system we had was fairly open in that I would go directly to the people involved and say: "Okay, you're making a recommendation here. How do you think it should be handled?" Then we'd talk it out and then we'd put the paperwork in process.

What I'd like to know and my concern is, and I think it's absolutely necessary, where's the responsibility? The responsibility definitely lies with management to change things or not change things. They have to respond. I did not totally agree with everything that came to my desk, because there were certain things that were not common sense to put in place when you looked at other factors. So that always has to be built into it, and it will, but what is the procedure? I'd like to know specifically from your perspective, what exactly is the procedure? When you make up a report, where does it go? What time are responses back? Does everybody know the system?

Mrs Edwards: In terms of what you're talking about, the procedure, the 21 days and the aspect of that: We do our standard health and safety inspections of areas, that is the procedure followed. The information is supplied to the committee. We go through the recommendations. The recommendations then are passed along, eventually to MAC for their ultimate approval, but in the process things are being done, in relation to our facilities management branch or starting on the work that is based on there, in conjunction with a discussion with a department head with regard to the recommendations to make sure things are done.

At the time this report was done I think my recollection is that, because they were making suggestions, not recommendations, that's why there's no feedback on it from MAC. It was just I guess the context and when they did it. They figured these were suggestions, because recommendations—what's there is fine right now. They can live with it but they think there should be something further. So this was not used in the same process.

Mr Froese: So what you're saying is that the process is in place and it works well.

Mrs Edwards: Right, with the normal process.

Mr Froese: It's not like maybe what we said before in this committee, thinking that there isn't a process in place. Everything's in place. It's working well. It's just on this issue, when it came to the security of people there were suggestions made, not recommendations, and you want more heads involved in thinking the process through.

Mrs Edwards: Yes.

Mr Stewart: A question maybe to you, Mr Vice-Chair: We've just heard that there are nine entrances or exits in the Whitney Block. I'm wondering if this committee, and maybe everybody knows but me, could find out how many entrances are also in this building. If it's

nine over there, I think we've got to be looking at entrances being open and other ones being closed so that they would only be open for exit purposes in an emergency.

In the Macdonald building over there the only security is at the information posts or stations when you go in. I guess this is either to you or to Bill; you're over there. I've been in there a number of times and I don't see any security other than the information booth. Is that right?

Mrs Edwards: That's all I've seen, offhand.

Mr Stewart: Is that of concern? I guess that's my other concern because it's connected to the Whitney Block. Again, a bomb is on the first floor or on the side of the building and it makes a hell of a lot of damage to the whole building, I guess. I think if I was to ask the same question to find out how many entrances also are used in the Macdonald Block and the Hearst Block, I guess for the whole complex, is what I'm saying—if we're going to deal with the thing, we might as well do it right and find out what's going on, if I could have that.

The Vice-Chair: We'll get that determination as to the number over there for the whole set of buildings.

Mr Stewart: Great. I'd appreciate it.

The Vice-Chair: Mr DeFaria.

Mr Stewart: As well as here, Mr Vice-Chairman.

The Vice-Chair: Yes, we have nine here.

Mr Carl DeFaria (Mississauga East): I would like first of all to compliment you on your review of the problems. I would submit that the main recommendations that you make here that I find to be very useful are number 1 and number 2, which is basically having emergency plans that take into account multiple emergency situations, because that's what happened on the throne speech day. There was no emergency plan that took into account the fact that you may have a bomb threat and at the same time you may have a demonstration outside so that people couldn't leave the building. Your highlighting that point, I think, is useful to the committee. I think we have to develop emergency plans that take into account multiple emergency situations and that don't conflict with each other.

Your recommendation 4, regarding the standard procedures to use the identification badges—the problem with the identification badges that you have is that any former client of mine could produce an identification badge like that in less than about an hour, an hour and a half. Unless you have an electronic system that you can, like you indicated, check through a computer by running it in a magnetic computer outlet, there is no way that you could have a safe system.

Not only that, I'm quite sure that by your experience people will just look at you and look at the badge and you walk through most times. Anybody can have a badge like that and walk through. You don't have to be staff. It's shocking to me that in a building like this people still use those kinds of systems. There should be procedure in place that if you're going to have identification badges, the security should compare the picture with the person specifically and not just look at the people and if they have a badge they walk through.

The only thing that is missing in your recommendations that I would ask if it's possible if you could send to

us is, is it possible to have situations like—you have been working here for a long time. If you could relate specific incidents that you have observed or that people have observed that created a situation of danger, without identifying the individuals or whatever, but just fact situations that you could suggest that have happened in the past six or seven years, on many occasions that you could see create a problem—excess exits and entrances into buildings that are not needed that we could get rid of, things like that, that happen in your buildings that you feel could be changed to increase security. I'd like to hear from you if you are aware of fact situations that you could find out from the workers in the building that you could relate to us.

Ms Fenech: What was the last part of your question?

Mr DeFaria: If you are aware of specific fact situations where that has happened and people feel, "Gee, anybody could have come here and done this because there is no"—like the example of nine entrances and exits that may not be needed. You may need only two entrances or exits to the building, or one.

Mrs Edwards: Could we go back to the group and we'll ask them for this information for both of those questions for you?

Mr DeFaria: Sure.

Mrs Edwards: Okay.

Mr Froese: I wonder, is it proper—I don't know; I'm new at this. My concern is that while discussion is fine, what we're doing here to familiarize ourselves and so on and so forth, my concern is that we as a committee could just keep on going and asking questions, whatever. I'm wondering if we could ask all the departments that are involved, like these good folks here, to specifically get recommendations on what they think should be done for security reasons, and also from all the groups that use the building specifically with respect to security, so that there's a starting point where we can start addressing the issues one by one, like some input as far as what we're going to do, what we're going to achieve.

1110

When we come back Thursday, after the subcommittee's gone to Quebec and to Ottawa, I guess I'd like to know exactly what we're going to do here. But I think a starting point is, I'm not familiar with all the security issues by any means on what should be done, and we should be getting the opinions of those people who use the buildings. We've heard that there are nine entrances in the Whitney Block; I think there are 13 here, or something like that. We should get specific recommendations from all those groups and then we could start dissecting it or saying, yes, no, whatever. I don't know.

The Vice-Chair: I'll let Ms Freedman answer that.

Clerk of the Committee (Ms Lisa Freedman): I can give you a little bit of help on that. When we set up the agenda for this committee, there were a number of people we wanted to hear from, and we've heard from most of them. We wanted to hear from the Speaker, from the Clerk, from the Sergeant at Arms. We wanted to hear from members and staff from the three caucuses, and in that regard there's been time put aside for each of the caucuses. We wanted to hear from staff in both Whitney

Block and the main building, and we wanted to have some input from the public.

In terms of staff in the building, as you heard today from the Legislative Assembly occupational health and safety committee, the only unionized assembly staff are an OPSEU local that was scheduled and cancelled out. You heard from Deborah Deller from committees branch in terms of the specific concerns about the committee rooms. You will be hearing from Karyn Leonard who's in charge of the interparliamentary and press relations. They are the first-point people as people walk into the building. Other staff were approached and didn't have any specific concerns or anything they thought would specifically help this committee.

We will be trying, for our third week, to put some time aside for the public in terms of people who have specific concerns, users of the building, people who may have had problems getting into the buildings. I'm looking at getting in touch with some tour groups or boards of education, and people who specifically contacted some of the caucus members in terms of concerns.

Other than that, we're flexible in the third week. So, we're open to any suggestions, any gaps that you may feel you need more information on in order to write a report. The end result of this will be some type of report, be it to the House or directly to the Speaker. So if you think there's still information that you're going to need at the end of this process after people who are travelling come back with some comparative information, it's open for the committee to just decide who else they want to hear from and I'll attempt to get that person before the committee.

Mr Froese: My problem still is that at the end of the day we're still going to be all over the place, unless we put in place from, let's say, the joint health and safety committee—they've got some recommendations. If it was your baby to make recommendations on exactly how the security should happen at the Whitney Block or to the Legislative Assembly, what would you do, specifically? Would you have a striped card? That type of thing is I think what I'm looking for. These are good recommendations—don't get me wrong, they are—but specifically what would you want to see? I'm not saying you'd have to answer right now.

Mrs Edwards: You mean in order of preference?

Mr Froese: Yes, exactly what you would, even you as an individual, even as an individual staffer—and that's what I've asked my staff numerous times. If you were making the decision, how things should run and for security, what would you put in place and the reasons why? Taking into consideration that I know there's probably a political side here, and you wouldn't—or maybe not. I think you might understand it, but not to the degree that maybe we as politicians would, but as far as keeping it open as much as possible, that might not even come into your thinking because, as I understand it, sure, at the Whitney Block for the safety of people who are there, you want to keep it as secured as possible. I'm sure you wouldn't want it to be a fortress or anything like that. We'd have to make those decisions, as this committee, what recommendations we forward on. That's understood. But if you wanted it the way you want it,

what would you recommend? I think that's what we should be asking all groups.

The Vice-Chair: Comments?

Ms Fenech: I think we would like to think about this and get a report back to you, have a written report from the rest of our committee and have something sent back to you or through the clerk, and as soon as we can. We have a meeting this Friday and we'll—

The Vice-Chair: We won't have any report ready by then, but—

Ms Fenech: No, but we will have something for you.

The Vice-Chair: You'll be able to respond? Okay. Thank you very much.

Ms Fenech: Next week, hopefully.

Mr Morin: I believe Mr. Froese has raised a very good point. Maybe a suggestion would be that instead of submitting a final report, we submit an interim report, to give the opportunity to everyone concerned, like these representatives, so that they read the report and so also, I should say, that no one can say, "We were not consulted." OPSEU wasn't here this morning. At least they would have the interim report. Give us your feedback. Then we come back and then we come up with a final report. This way everybody would have been asked for their point of view and it would be sort of a collage of all the best recommendations that we can obtain. Because it's a very serious matter. You have raised concerns, and that is the first time I've heard them, about the building the Whitney Block.

The Whitney Block, in my opinion, was always a place where there was no concern; the concern was over here. But obviously you're a member of the staff—I don't know many how many thefts happen in your area, how many threats there are—so I think you're entitled to be as protected as these people here in this building. Again, to repeat it, instead of a final report, an interim report, and after that, all the information comes back here and then we issue a final report.

The Vice-Chair: Mr Morin, in terms of the final report, do you have any kind of outer time limit, six weeks from now, eight weeks from now?

Mr Morin: That's up to us to decide. If it's a complex report, then we say okay, give them six weeks or give them five weeks, because I know within my own caucus, if we were not to consult them, if we were not to submit an interim report, they would criticize us, and the same thing will happen with your own colleagues. I've gone through that I don't know how many times. But this way everybody will have an opportunity to voice an opinion.

The Vice-Chair: That's an excellent suggestion. What I think we could do is undertake, after the folks return from Quebec City, to compile an interim report and ship it out to the groups concerned, even those that haven't made a submission, and put some kind of approximate final week on it and then it could be looked at by the subcommittee when they get back.

Mr Morin: Yes.

The Vice-Chair: Any other questions?

Mr Stewart: If you're looking at a date or a proposed date for a final submission, I would suggest that it be done prior to March 18, mainly with the House going

back then. I think we should be prepared to act on it prior to then.

The Vice-Chair: So noted.

Mr Stewart: You're looking at probably six weeks, which is what Mr Morin was saying, suggesting. Prior to that date, I would suggest.

The Vice-Chair: Any other questions or items? Okay. Then I move to adjourn this session until 10 am on Thursday morning. Those who are travelling today can meet where all the photos are taken at 3:45 pm, those who are going to Quebec City.

Mr Bartolucci: I thought you were dealing with our witnesses, but you're finished.

The Vice-Chair: Sorry.

Mr Bartolucci: I just have one point of clarification I'd ask the Vice-Chair to rule on. It's with regard to Mr O'Toole's challenge of Mr Pouliot. I don't want to be confrontational here, but I do want everyone to have a very, very level and fair playing field. Mr Pouliot is a sub on this committee today and, as such, he has every right of every other committee member, and under anyone's rules of procedure, Mr O'Toole would have been deemed out of order with his challenge to the trivial nature of Mr Pouliot's comments. So, Mr Vice-Chair, I am just asking for your ruling. Is it in fact appropriate for a member of equal status to be criticizing the method, content or method of presentation of another member? I heard a question being asked by Mr Pouliot, and I would just like to know what your ruling is with regard to that.

The Vice-Chair: Mr Bartolucci, Mr O'Toole did not have a point of order. On the other hand, let me point out

that your Vice-Chair usually likes to give a considerable degree of latitude in the exercise of putting questions. However, it should be noted too that Mr Pouliot to some extent I think, if he'll with all degree of grace and fairness—perhaps I didn't hear the question clearly—perhaps might be moving along a little more, how shall I phrase it, more prolonged than necessary. But I'll leave that to your judgement, Mr Pouliot. Maybe we could get the questions more precisely worded in the future. That would be a good exercise for all of us to undertake.

Mr Bartolucci: But, Mr Vice-Chair, let's not remove or divorce the issue that is being presented as a point of clarification. Clearly you said he was not correct; therefore, I don't think he has the opportunity or right to do it to Mr Pouliot. Certainly you as Vice-Chair can tell him to be more pointed, to get to his question. But I do not believe a member has that right, and at that point in time I think he should have been ruled out of order. I just say that because I want to know that at this committee everybody's ideas and everyone's approach to presenting a question or a comment are equally respected. That is very, very important to me with regard to process.

The Vice-Chair: So noted. In the future I will rule with a little more effectiveness, perhaps, in terms of we will not have these points of order being brought up, and I would ask for all members to be much more tolerant and co-operative on all sides.

This meeting is adjourned until 10 am on Thursday February 7.

The committee adjourned at 1123.

CONTENTS

Monday 5 February 1996

Security of the legislative precinct	M-51
Legislative Assembly joint health and safety committee	M-51
Mary Edwards, co-chair	
Diane Fenech, co-chair	

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

*Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions presents / Membres remplaçants présents:

Pouliot, Gilles (Lake Nipigon / Lac-Nipigon ND) for Mr Silipo

Clerk / Greffière: Freedman, Lisa

Staff / Personnel:

Sibenik, Peter, procedural research clerk, Office of the Clerk

1201
XC20
L20

Government
Publications

M-7



M-7

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Thursday 8 February 1996

Journal des débats (Hansard)

Jeudi 8 février 1996

Standing committee on the Legislative Assembly

Security of the legislative precinct

Comité permanent de l'Assemblée législative

Sécurité de l'enceinte parlementaire



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Thursday 8 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 8 février 1996

The committee met at 1010 in room 228.

SECURITY OF THE LEGISLATIVE PRECINCT

The Chair (Mr Ted Arnott): This meeting of the standing committee on the Legislative Assembly will be called to order. Our clerk, Lisa Freedman, wants to indicate some information to the committee.

Clerk of the Committee (Ms Lisa Freedman): I'd just like to go over the agenda for today and next week, because I know people are trying to plan their own schedules. This morning we're starting with Peter Sibenik, who will be reporting on our trip to Ottawa and Quebec. At 11 o'clock we have interparliamentary and press relations coming in to speak.

This afternoon was the time reserved for the PC caucus and they'll only be using probably a little bit under one hour of it. Mrs Marland and Mr O'Toole are using that time. There will also be time after that, if Peter doesn't finish with his report from Ottawa and Quebec, and we'll continue then.

Next week, the way the schedule looks is that on Monday we won't be starting until 1 o'clock. Monday afternoon we have the press gallery and we're trying for some of the people from the public. The Speaker and the Clerk want to come back and speak to us, and tentatively that's scheduled for Wednesday of next week. I may try to change it to Tuesday. We'll be report-writing or inputting into the report, so you can assume that next week on Monday we'll start at 1 and all the other days will be 10 and 2. But you'll get your official notice in your office later this afternoon.

The Chair: I want to inform members of the committee that we have a guest with us today, Neil Reimer, who is a committee clerk at the Legislative Assembly in British Columbia. It's good to have you with us, Neil.

Mr Neil Reimer: Thank you.

The Chair: I hope you enjoy our proceedings.

Now it's time to report to the full committee the sub-committee's findings of the trip that we took the last couple of days to Ottawa and Quebec. Peter has taken copious notes of what we found and worked late last night putting together a presentation. After Peter's presentation, I'm going to turn to each of the caucuses to provide their preliminary suggestions as to what happened on the trip and what this committee should be doing further to recent events. I turn it over to Peter.

Mr Peter Sibenik: I'll be speaking about the National Assembly at Quebec City first. I'll then be turning to the House of Commons security service and then going on to the Senate protective service. We had the benefit of visiting and meeting with officials from all three services.

Beginning first with l'Assemblée nationale, or the National Assembly, we were briefed by the Secrétaire-général, Pierre Duchesne, and his security staff, for the better part of the day. The organization of the security service at the Assemblée nationale is as follows:

The Speaker is statutorily responsible pursuant to the National Assembly Act for the security at the assembly. The Speaker or le Président, as he is known, guards the privileges of members and protects the independence of the assembly and provides for members' security. There was a 1994 memorandum of understanding between the Speaker and the Minister of Public Security, under which the director of security at the assembly will, under the authority of the Sûreté de Québec, which is a police force under the jurisdiction of that particular minister, plan, direct and supervise assembly security.

A lot of the developments that have occurred, or the rationale for the level of security at the National Assembly is due to the 1984 Lortie incident. An advisory committee was struck soon afterwards and it has expert security staff on it. However, the Speaker has the final say about what that advisory committee can recommend and in fact the Speaker has been known to reject recommendations from that particular committee. The Speaker reports to the Office of the National Assembly on security as well.

The security budget is \$4 million. The security personnel are as follows: There is this detachment of the Sûreté—the Sûreté is the Quebec Police Force; I guess it's fair to say they are the counterpart of our Ontario Provincial Police—that is under the aegis of the director of security. This director is appointed by the Speaker on the recommendation of the Secrétaire-général, who is someone who would be holding Mr DesRosiers's position here in our House, akin to the Clerk of the House.

This director of security reports to the Speaker, and the Speaker gets a full report of incidents that occur or might occur, before and afterwards, although it is only the QPF, which is associated with the ministry, that might get the fuller kind of report dealing with criminal matters.

The security detail there, under the aegis of the Quebec Police Force, is comprised of 14 plainclothes constables. They make about \$50,000 a year. In addition, there are 45 QPF-supervised special constables. They are in blue uniforms, they are armed and they have powers of arrest. They make about \$37,000 a year. In addition, there are 37 security guards. They are in grey uniforms, they are not armed, they are part-time and they make about \$25,000 a year. So the entire staff there is approaching 100 persons.

There are a large number of entrances at the Parliament Building, at the National Assembly; in fact, there

are 14 in all. However, not all are open. These various entrances or doors are numbered to reflect the differing levels of access and who can get into them. For example, when our delegation arrived, we came through door number 1, which is the largest entrance and in a previous life probably was the main public entrance, but now it is reserved for special visitors.

The public gets through door number 3. We got a dry run of what it was like to go through door number 3, which is the main public access. Basically, as soon as you come in the door there is a receptionist in the ante-room. After that, there is the scanning room. There is a scanner there; there is a metal detector; there is a hand-held security wand. It's the standard kind of airport operation, not unlike what we have upstairs adjacent to our public galleries. In this room, there are two blue-uniformed constables. They have side-arms. The side-arms are in open holsters. That was mentioned by one of the members of our delegation. We didn't really see that kind of a presence in Ottawa. That is a higher level of security, it seemed to us, than both the Senate and the House of Commons in terms of the visibility issue.

After this particular room, you pass into another room where there is the actual registration that occurs. Passes will be handed out. There are colour-coded passes. In fact, there are colour-coded passes in all the jurisdictions we visited. They could be yellow, green, blue, like that, depending upon whether you're a member, staff, press, a construction worker, something along those lines.

A public visitor cannot go unescorted to a member's office. The member's office is phoned and the individual visitor is picked up. All the tours come through door number 3. Everyone has to go through that process. I mentioned that there are other doors with other numbers. If you want to go to the library, it's door number 7. If you want to go to administration, it's another door. It's broken down on that basis. There's even a door for the delivery entrance, where there's a scanner as well. There are approximately 150,000 visitors per year to the National Assembly, and just under 100,000 enter through door number 3, the main public entrance.

Some of the details of the interior: There are magnetic locking doors to close all doors simultaneously in case that is necessary. As a result, the visitors' corridor can be sealed off from the rest of the building. So there is a way to separate what could be happening in a particular area and insulate that area from the rest of the building.

1020

The Chair: Peter, if I could just interrupt, I want to welcome the Speaker to our discussion this morning. Good to see you, Mr Speaker.

Mr Sibenik: We visited the control room. It has some of the same kinds of features, generally the same kinds of features, that we saw in our own control room, so I won't go into any detail about that.

Turning to the issue of demonstrations, we were told that there have been some large demonstrations in the past. On one occasion, there were 15,000 people out there and there were 500 QPF officers who were held in reserve in the basement of the building on that particular day. However, we were also told that the use of this reserve force is very occasional. It's rarely needed.

We were told that the demonstrators are expected to act responsibly, that the organizations that demonstrate on the front lawn have an image to uphold and that the security force at the assembly expect them to behave. The assembly does not provide broadcast facilities. In fact, they even have to bring their own electricity, we were told, as well. So there's none of the provision of facilities that, for example, you might find at our own assembly; they bring their own sound system as well.

They provide their own security in a sense that they self-police themselves. They have their own marshals, or the security encourages them to do this kind of thing. That was the striking feature, I'd say, about the kind of demonstrations that might occur on the front lawn of the Hôtel de Parlement in Quebec City.

The QPF talks to the demonstrators beforehand and tries to elicit their cooperation. A municipal permit is required from the city police if a group wants to demonstrate out there.

Some of the other features of this particular security operation are that horses, dogs, mace and army-type fatigues are not used. We were informed that the idea is not to escalate any kind of confrontation, although there were camera pictures that we saw in the control room that were taken from a high-altitude helicopter, but I believe the idea is that this helicopter couldn't been seen or heard from the ground, so it wasn't like your kind of American cops-and-robbers show where the helicopter is swooping down low and making a big racket. It wasn't that kind of thing at all.

With respect to the committees and the committee rooms, a security officer could be sent to the committee room, but it seemed like the red phones that were just outside the committee room doors were generally satisfactory. With respect to these red phones, I believe there were 300 of them throughout the entire building. As soon as one is picked up, the control centre, the op centre, knows exactly the location of that phone, so the person doesn't have to say, "I'm calling from committee room such and such." The security already knows as soon as the phone is picked up.

There's no security in the constituency offices, but the QPF will meet with individual members to let them know what measures could be taken at those particular offices.

In conclusion, I think there's a sense that the security officers we met with were generally satisfied with the system, particularly with the presence of the QPF. They made pains to say that they were on a friendly basis with the Speaker and that they had the expertise to handle the situation there. There really wasn't any concern whether the QPF was in a position of some kind of conflict, although it was noted, as I indicated at the outset, that the QPF generally is under the aegis of the Minister of Public Security. But the point was made that the government could not order the Speaker to bring in more security. The QPF detachment at the assembly makes an independent analysis.

The special constables, and I mentioned that they were armed, do have weapons training, but they indicated that weapons were never drawn since 1984, when weapons were acquired in the wake of the Lortie incident. That basically is the National Assembly.

The Chair: Could we maybe stop at this point and see if any members have questions or clarification relative to Peter's presentation to this point.

Mr Gilles E. Morin (Carleton East): I just have one quick question. You mention that there is a close relationship between the Parliament, the security, and the demonstrators, where the demonstrators have to police themselves. I think it's an excellent idea. I think that's the way it should be done. But at the same time, were there any incidents or any occasions where demonstrators succeeded in penetrating the House, as we saw yesterday?

Mr Sibenik: I don't believe we were informed of a particular incident. They generally have things under control and they couldn't really show us a large number of incidents in which there had been a problem dealing with the storming of the front doors or something along that line. I can't recall that kind of a situation. They're able to deal with the situation outside the front doors.

The Chair: I'd just ask all members to have questions related to the specifics of Peter's presentation, because all caucus members will have an opportunity after we're finished to express their views and so forth. Mr Miclash.

Mr Frank Miclash (Kenora): You indicated that we were going to speak in rotation. Might I suggest that we do that first of all before questions, because I think a number of the points that are going to be brought up in terms of Peter's presentation may be covered by myself and Mr O'Toole as we go around. Then would it be better to have questions at the end? I don't know.

The Chair: I was thinking in terms of clarification.

Mr Gilles Pouliot (Lake Nipigon): It doesn't mean I'm right, Mr Chair, but as much as I like and respect all of our colleagues, all our friends here, not that you wish to have a long, long prelude necessarily, but there's a bit of a philosophy there. So for the sake of the flow of it, I'm quite willing to listen and I'm taking some notes.

The Chair: All right. Does that satisfy everybody?

Mr Pouliot: Otherwise, we might never finish.

The Chair: Proceed, Peter.

Mr Sibenik: Turning to the House of Commons security service, we met with General Cloutier and his senior staff at the House of Commons. Mr Cloutier indicated that the philosophy of the security service was to provide an effective but not an oppressive security service. It was important that citizens receive access to the Parliament Buildings.

Part of the difficulty that the security service is labouring under on Parliament Hill is the fact that the area is a construction zone, and will be for approximately the next 15 years. That imposes additional difficulties on the kind of approach that the security service takes to the provision of security.

The security service has five buildings that it has to provide security for. There are 83 posts at which security personnel are stationed. The main entrances are open 24 hours. The size of the security staff is as follows: There are 240 staff; 151 of them are in uniform, 35 are in the plainclothes gallery unit. The budget is something approaching or just over \$10 million. Most of that is salary, we were told. There's no chargeback to the RCMP for the services that the RCMP provides on Parliament Hill, and I'll get into the role of the RCMP in a bit.

The constables on the security staff are paid \$37,000 per year. The only weapons that are in the possession of the security service are on the plainclothes unit only, not on the people in blue uniforms. There is no open display of arms in the House.

Mr Pouliot: They're all at 24 Sussex.

1030

Mr Sibenik: We were briefed on the technological developments, the current state of technology and where the security service expects to be over the course of the next three or four years. We were told about the photographic imaging that could occur for visitors and employees and about the common database that will be shared with the Senate protective service, biometrics, digital alarms. We were told about this, but I have a sense that the technology is in a state of transition, and it's in a state of constant evolution as well, it seems to me.

Heritage considerations are an issue. Members may recall when the tour was taken the other day that it seemed to have been a big issue with respect to changes in the public gallery. Well, it's also an issue at the House of Commons because there's some difficulty with the implementation of things like card swipes because it'll cause some damage to the doors, for example. We met with the Speaker, Mr Parent, and he indicated that it was difficult making alterations to the Speaker's chair because heritage considerations had to be considered as well.

Heritage also comes into play because that's where demonstrators get their permits from. The secretary of state for heritage is where permits are gotten, and permits are necessary for demonstrators. Generally they wanted about one month's notice for a demonstration. You apply one month in advance, but in the course of the meeting I believe we were told that these permits could be expedited on a few days' notice.

The service is responsible for different kinds of things in the Parliament Building and these five buildings generally. They protect the Prime Minister inside the House. So the RCMP detail that is responsible for guarding the Prime Minister hands off to the Commons security service at the front door of the Parliament Building.

Generally speaking, the RCMP is responsible for things that occur outside the building, for perimeter security and things like that, and the internal security service under Mr Cloutier's leadership is responsible for what happens inside the building. There's a high level of cooperation, however, between the service, the RCMP and the Ottawa city police. In fact, the constables there in the security service are trained by the RCMP. They have that standard, and that was seen as very significant. Basically, if there's a demonstration on the front lawn, the RCMP will deal with that and let security service know what exactly is happening. There are camera feeds that go into the control room, and those are provided by the RCMP.

We were also given a briefing by the Senate protective service. We met Serge Gourgue and he indicates to us that there are 80-person years, 75 staff in the service. It's a \$3-million budget. The operational personnel work in six teams, and the subcommittee will recall that he took a great deal of pride in the way that he approached security, or the entire protective service approached the issue of security. It seems to me that it was a less

regimented and more of a flattened hierarchy in the Senate protective service than it was in the House of Commons, although the heads of both security services are military men, I might add.

Again, there is a high level of cooperation with the RCMP and also with the House security service as well. For example, the Senate does all the scanning for delivery on Parliament Hill for the House and the Senate, whereas the House security service will do the mail scanning for both the House and for the Senate. So it's that kind of cooperation, and more was anticipated, certainly things like common databases between the Senate and the House of Commons security service. A joint service was considered, but ultimately rejected.

That basically is a summary of what happened in our trips to Ottawa and Quebec City.

The Chair: Thank you very much, Peter. If we're to stick to our agenda, and I'd like to, we have about 20 minutes for reports from the various caucuses. If we could divide that time equally, because we have another witness coming forward at 11 o'clock, so maybe seven minutes per caucus. If there's some time left over, we'll deal with that at the time. Mr Miclash, as the representative of the Liberal Party on the subcommittee, we turn to you for your comments.

Mr Miclash: Thank you very much, Mr Chair. Peter, you've given a very good overview of what we've seen, for sure. I have to say, the Speaker is not here, but if you're ever going to travel in committee, make sure you take the Speaker with you, because it always tends to bring on a little bit more hospitality than you do when it's a normal committee. At both the National Assembly and up in Ottawa we were well received. They opened the doors for us and showed us whatever we wanted, answered any questions that we had, and so it was a very good visit for all of us to have taken part in, to be there with them to be able to ask our questions.

Let me start with the National Assembly in Quebec. The thing that struck me the most, and Peter has referred to this, is that the minute you walk in the door, you have two officers that are visible, with side-arms. They were quite visible. Even though you went through a receptionist who was the first person you met—I guess she was the friendly greeting—these two other officers would you put you through the scanner and, as Peter has indicated, ensure that you had nothing with you that they wouldn't want you to take in.

Then you went into where they classified you, type of visitor, and gave you your visitor card, which is of course the normal pass that you would wear. The passes were colour coded, and it was very easy for security officers within the building to identify your purpose for being in the building, whether it was a colour code to indicate that you were with a group, a tour, whether it was colour coded to indicate that you were visiting a member's office, that was quite evident.

The advisory committee was another thing that I thought was a good idea. Peter has also touched on that, where the advisory committee was made up of not only people from within the security system within, but with police chiefs, superintendents, from outside of the actual security system as well, from the surrounding police

forces: the QPP, the Ottawa police, the municipality police forces. So another good idea.

In terms of the entrance, there was one entrance that was designated as the visitor entrance. Again, very controlled in terms of visitor access. Peter talked about the various door numbers. That happened to be door number three, so that if you were a visitor going to their assembly, you would certainly have to go through door number three and go through the three processes that I indicated: the receptionist, through the scanner, and then on to receive your pass that would eventually allow you into the House. Again, I thought it was a good idea.

There was something else they showed us which was interesting, and I noticed this as soon as I got back yesterday when I happened to pick up the news. Their gate system in the front is a temporary gate system but one that is quite different than ours. It's a double gate, where you have the actual gate that goes across the front and then you have one that weaves back and forth. So I'm not sure, in terms of an incident such as yesterday, as to whether that gate would have held upright, but I think the idea of it is to ensure that if people are going to come beyond that, they would have to come over, because again it was the initial gate out front, then the other one zigged back and forth, and I think that was a feature that was interesting. Again, a temporary double fence is what I would call it.

The permanent idea, and again Peter referred to this, where each demonstration, each group that was demonstrating, would require to receive a permit from the municipal police force. Again, all of these police forces were remaining in very close contact with each other so that the folks within the QPP and the municipal police force would all know about these permits through communications between them. Therefore, once the permit was issued, they would have a fairly good idea as to whom they were going to be facing, the number of people. They would also get in touch with the group and discuss with the group some of the issues that might arise, the possibility of self-policing, which I found very interesting, and again, opening up mainly the lines of communication, not only among themselves, among the police forces, but with the group as well. So I thought that was an interesting aspect.

1040

The idea of no dogs, no horses, no mace, was interesting as well, but Peter did mention that they did have backup within the building, in the basement, if they needed it, in case there was any kind of escalation to the confrontation. They certainly indicated that.

The sealing of portions of the building I found interesting as well. A lot of the doors were on magnetic locks, so they could seal that door from their control zone just by the use of magnetic locks, even though when they went to demonstrate it, they didn't work to the best of their ability. But it was something that you could see would be useful if a problem such as yesterday occurred in this building.

The red phone system was very similar to what we see here at Queen's Park, our white phone system. They were much more evident, of course, being red phones on the wall. I'm sure they were much more visible not only to

the public but to people who may need them. When we heard about committees, people attending the committees in possible need of those, it was quite interesting to note their visibility right outside the committee room and in places where they may be needed.

In terms of the House of Commons, our visit there, I found it very interesting, the difference in operation. As Peter has indicated, the RCMP take care of all the policing outside of the actual building, yet when you come inside, you're under Mr Cloutier's direction. It's obviously a military presence in that direction. That came out a few times during our visit, that things were fairly tightly controlled. There was certainly a chain of command in terms of the security personnel, and it was quite evident as we toured through the building to see the chain of command as it worked in terms of the building.

Peter has also mentioned budget—\$4 million in Quebec to \$10 million in Ottawa as compared to our \$3 million here—and it was interesting to see what they got for their money. I was waiting for a question to come up about 24 Sussex Drive, but we were too polite to ask, so we stayed away from that.

I was impressed as well with our discussions with, as I say, the chain of command and their attitude about creating a culture to do better. That was something that certainly came through a number of times in terms of always having one eye forward on what they could be doing better. They talked about having a committee among the people who were providing the security. I can't remember what they called it, but a committee that would have input into their training, input into any occurrences that happened.

Another thing they talked about too was the selection process of the people they have in the House of Commons. They indicated that their average age was, I believe, 31 or 32. It was very young. I was quite surprised at what they indicated for an average age of their security personnel.

The Chair: Mr Miclash, could I ask you to wind up your comments? Sorry to do this, but in the interests of keeping to the agenda, could you just wind up?

Mr Miclash: Again, the heavy coloured borders and ID passes stuck out. We talked a little bit about committees, and Lisa asked a number of times about what they do if they have a problem in committees. They got around one problem that we would have here by having a wireless, silent alarm, so if we had a problem here where we can't go through the window, there would be a wireless, silent alarm here.

All in all, I guess that's about it. Again, some great things that we did learn during our travels, and I'm certainly looking forward to questions.

The Chair: Thank you very much for that very thorough presentation, Mr Miclash. I want to turn to the New Democrats now. Unfortunately Mr Christopherson is unable to be here. Mr Pouliot is prepared to provide some general overview, I guess, of the New Democrats' interest in this issue.

Mr Pouliot: I listened with a great deal of intent to what has been a very accurate and "action directe" report vis-à-vis our situation, the one at l'Assemblée nationale, the self-discipline, not to mention the incident, or the lack

of incident, at 24 Sussex. I think those things are best dealt with under editorials and cartoons—mostly the second instance—and I thank the Lord every day that our Prime Minister is married and at present living with his spouse. That has served very well. But if anything happens, well, I have to call my boss, and you're right; you can sense the chain at the chain command.

Mr Christopherson, our colleague, was our delegate on the subcommittee that attended the last few days' trip to Quebec city and Ottawa. I, too, was able to notice through the years some differences between l'Assemblée nationale and the Legislative Assembly of Ontario, especially when I started with the dining room. The colours are different. In some places you eat and elsewhere you dine, and one can go on and on and on, but it came back with some recommendation, but restraint and constraints in mentality did not afford for a good forum so it was left to what we are fortunate to have.

We will differ, quite likely, in philosophy, and let me say that the incident that happened yesterday in some terms highlights the necessity to—well, it calls for vigilance. Having said this, we have been the beneficiary, not only people who are elected. It matters none. People who work here, the general public who come here and pay us the compliment of their visit, journalists who cover the events around Queen's Park. It's been pretty good over the years.

We will wait for a draft and we will look—I imagine the whole committee will do that—at the options. We have a tradition in our party. We're close to some groups that wish to express either their satisfaction and, from time to time, their dissatisfaction, and come here voicing their concerns and proposals. We sponsor; we help organize. We must keep in my mind that with the New Democratic Party there is an element in it, a very positive element, which resembles a movement, a matter of solidarity. So we feel that the issuance of permits does not sit quite well with us. We feel very democratic in terms of access to the precinct.

We, too, are concerned with funds. On the one hand, you have so many dollars dedicated to security. The sentiment of the day is to prioritize. Well, people will come calling with their priorities so maybe you could be going countercurrents and this will demand more imagination from the committee. We will have to keep that in mind. It's a reality.

Having said this, the security system has to be paramount, a reality check. It's not the time to point a finger. I, for one, believe that be it circumstances from time to time, you can't predict what will happen. It goes beyond political parties, certainly, or political philosophies. I don't think it has anything to do with it, myself. You could have some subject matter such as the right of a person to abortion. You could have some animal—and I say this with the highest of respect to everyone's opinion—you don't know what's going to happen. You could have just as much a negative reaction on an animal bylaw than you could have on amending the Constitution. So everyone is at the mercy of everyone when it comes to that, both collectively, if you have a demonstration, and also the decision of individuals. So I keep that in mind.

1050

Security is paramount and our party will certainly look at that. It's not an easy task. We must be able to represent people without having to worry about something else.

By the same token, the legitimacy of people to use the web, the tunnel system, to go and access the subway at University, this is a big, big complex. It's also a downtown complex.

I'll stop here because I risk entering some fields that I really don't know much what I would be talking about, but we will be vigilant and I want to see what the experts, what alternatives, what drafts they have.

The Chair: Thank you, Mr Pouliot. Your caucus still has one minute. Mr Cooke, did you have something you'd want to add to that? No.

I'll turn now to Mr O'Toole for the Conservative caucus. Mr O'Toole, if you could give your ideas of what you saw and what you'd like to see done in the future.

Mr John O'Toole (Durham East): Yes, very briefly, I appreciated the opportunity for the visit and indeed, we were escorted by the Clerk and our Speaker and treated very respectfully and were given full access to anything we wanted. I think all members enjoyed it, if I could be so presumptive.

I would say the general statement, looking at the whole trip, is in every place we went, security was clearly of a very high current priority and in every jurisdiction. Clearly, there was, however, a feeling that the House or the Houses we visited were indeed the House of the people, and that came through even at Quebec. However, there were, as they described, a set of expectations of visitors, as I would in visitors coming to my home, and that seemed to come about as respect.

From that premise—again, this is a general statement, but I was very impressed with not just the chain of command, as mentioned by Frank, but by the professional stature of both the persons we met in charge of both Quebec and in Ottawa. Both had a somewhat military background; not military in their personal presence, but in their professional approach to dealing with us as visitors, and indeed, the way they approached the training and the high level of professionalism of their career or pursuit or focus.

I would say generally what they all mentioned at great length, the QPP and the RCMP, was the standard of training. In Ottawa, even the members of the Commons force were trained, many of them at Aylmer, Ontario, and by the RCMP. I would suspect that in Quebec it was even a higher level of training. In fact, they were trained regularly in crowd control and riots and all those kinds of high-level training. But training was mentioned repeatedly, an annualized event both in the Senate group and the Commons group and in Quebec.

My overall impressions, those being said, I would say that security was visible. It was visible but not ominous. Maybe if anything, a little more ominous because of the presence of guns, which I guess in Quebec in their situation, it's a call they made. But there was really a visibility of security, for sure.

Access was controlled, no question about it. I thought it was appropriate because, in each case, there were

many, many, many doors where you could come in and out. But controlled access, I think, is something fundamental. We just can't have people coming and going at every single door. Their right to come and go is not in question at all. Having some kind of identification system—I think we're there, in many respects, now. The cards that they produced there are very similar to the digital system we use for our own identification passes.

I would guess that I'm more interested in the discussion this morning. I think we've had a very good report. But I think, to summarize, I was impressed that no one was in the building without some sort of controlled card, identification etc. It was done respectfully throughout both places, even in Ottawa. They handle a million visitors a year. Generally, if you come in and you're on a tour, they bunch them up in 50s, and you are never unattended as you go anywhere in the building, but they have limited access throughout the building as well.

In Quebec City, they can tell at a moment how many people are in the building and at the end of the day how many people have either not returned their card or how many are still in the building. I like the idea that when you go in, anyone gaining access has some descriptor; either they're visiting a member, they're a delegation at a committee or they're just a visitor on a tour. I think that's paramount to control—not control in the sense of manipulating, but control in the sense of maintaining a certain kind of overview of what's happening in the House itself.

That's the general nature. The rest has been covered very thoroughly by Frank. Again, I want to thank the committee for allowing us to go.

The Chair: Mr Miclash, we don't have our witness. Did you have anything else you wanted to add, since I unfortunately had to cut you off sort of mid-sentence?

Mr Miclash: That's fine.

The Chair: If I could have the committee's indulgence, the Chair might like to enter into this discussion as well. I have a few points that I think we should be considering. Some of what I'm going to say is probably repetitive of what has already been said, but if I could just say what my findings were, I think we don't want to overlook the fact that this is an open building, this is the building that is owned by the people of Ontario and we want to maintain the openness to whatever extent we can. We want to think about keeping enhanced security measures as invisible as possible so as to maintain that concept of openness. It's been raised previously, but I think it's important that the security staff are well aware that we want them to be welcoming and friendly to visitors who come into the building.

I think the role of the Ontario Provincial Police needs to be looked at. As we found in Ottawa, they look after all of their own security arrangements within the building. We need to consider greater control of public access. Rather than having a number of doors open to the public, perhaps we should give consideration to allowing one door open to the public so that we can make sure we know who's coming in and what their intention is.

In light of yesterday's events, we need to examine ways to maintain the peacefulness of the demonstrations, again recognizing that people have a right to demonstrate,

if they wish to do so, in the legislative precinct. We need to give consideration to having an ongoing committee which can advise the Speaker on security issues, a permanent committee established; perhaps a subcommittee of this committee would be a way to go about it.

We need to look at enhanced security for the committee rooms so that when public hearings are being held everyone's safe.

We need to look at putting call display telephones in the members' offices so that we know who is phoning us when threatening phone calls may be coming in.

Those are the things that came to my attention that I wanted to bring to the committee's attention.

INTERPARLIAMENTARY AND PUBLIC RELATIONS

The Chair: We now have Karyn Leonard here from interparliamentary and public relations. We are scheduled to hear her views. Thank you very much for coming forward, Ms Leonard. It's good to have you here.

Mrs Karyn Leonard: Good morning. I represent the interparliamentary and public relations branch here at the Legislative Assembly of Ontario. Interparliamentary and public relations has a diverse mandate and serves the Legislative Assembly of Ontario through a variety of programs and services.

The Legislative Building is first and foremost a Parliament. It is also a workplace, a historical site and a tourist attraction. Most areas of the assembly will be impacted in some way by the way in which security is managed and enforced. Accessibility and the message you wish to send out to those visiting the building are the questions.

As you go about this very difficult process and make decisions about accessibility and security, there are some things we would ask that you take into consideration. Over a quarter of a million visitors visit this building each year on tours, as individuals, as part of educational programs and as citizens with questions. In addition to that, we receive in excess of 50,000 telephone inquiries through our branch, on average, per year. A large majority of these visitors and telephone inquiries are your constituents and people who live in various parts of this province.

1100

We are responsible in IPRB for the management and delivery of information, education, communication and interpretive programs which focus on the role, history and activities of Ontario's Parliament and which hopefully will increase public understanding and awareness of the Legislative Assembly. These programs welcome many groups from around this province, across Canada and indeed from around the world. These groups take an educational tour of the building that is tailored to specific needs and levels of understanding. A community exhibit program also brings representation of heritage, history and culture from across the province. Most Ontario groups are greeted by their member of provincial Parliament and a large number also attend the House while in session.

The public inquiry centre in the lobby of this building is the welcoming point for thousands of people every

year. Individuals are provided with direction, information and assistance concerning all aspects of the Legislative Assembly, as well as government ministries and agencies and services that are available.

The legislative gift shop is a retail operation showcasing Ontario-made products. This shop serves the members, staff and visitors to the Legislative Assembly and Legislative Building, providing a wide range of gifts, crafts and souvenir items that reflect the history, heritage, artisanship and culture of the province.

Each year a number of delegations visiting from various parliaments are welcomed to this Legislature by the Speaker and members of the Legislature. In most cases, a tailored program is planned, developed and managed according to the needs of the visiting delegates. If access is to be limited, will there be special provisions to fast-track through various parts of the building? This is only one of the questions that you will have to look at.

All of these services operate out of the main lobby. I don't need to tell you how events such as yesterday's impact on staff working in those areas. A large number of different scenarios and personalities, though, are dealt with daily. Up to 35 buses per day have been recorded as they stop by on tours of this city and beyond. We have telephone calls and conversations regularly with tour operators who very much want to make this building a stop on the route but are discouraged by difficulties encountered in parking, dropping off visitors etc.

We also coordinate all event bookings for inside and outside the building. Events and demonstrations scheduled for the building grounds must have the written sponsorship of a member of provincial Parliament. Ticketing for the public galleries is also done in the main lobby. This is a process with varying demands by the public, depending on ongoing issues, and it is an area of concern for safety, depending on numbers.

As you know, security implemented a photo identification system for staff and contractors some time ago. We have a reservation system for school visits, booked programs, visiting parliamentarians and members' guest tours which allows for escorted and organized movement from station to station in a safe manner.

Last spring, a temporary visitor pass system was created and implemented by the branch in response to the security needs and as a temporary measure to identify a specific type of visitor to the Legislative Building. Groups and individual visitors wishing to see the building are asked to sign in and given a temporary pass allowing them access to the designated areas, which are the main floor, east and west hallways and the chamber. These areas are staffed by security and guests do wander on their own. In the designated areas, this system is only applicable to the walk-in visitor and bus groups. Many areas of the building are not generally accessed by the public without prior authorization or organized visits. The Ontario government art collection, recently reinstalled on the walls of all four floors of the main building, for instance, is not available to be seen by the general visitor.

Entry for other visitors is not structured. It is in this area that likely a great deal of work assessing situations and solutions needs to be done. People enter and exit the building through many doors during the day. These

include people wishing to visit a member or the Premier, witnesses and others going to committees and those using services available in the Legislative Building as well.

Once you, as the elected members of this Legislature, determine an accessibility philosophy for the precinct, a manageable solution can be developed outlining policies and procedures. Very clear directions and guidelines that are communicated to all occupants of the legislative precinct are critical to the success of this program.

Training is also critical, not only in procedures, but also in public relations skills, as a high degree of professionalism is required at all times in order to convey the right message that you wish conveyed. The way in which people of this province are welcomed and processed through the system gives a particular impression. You must decide what you want conveyed. We play a significant role in assisting your constituents and all other visitors to this building and this province.

Over the last 20 years, I and many like me who have been in this building for that number of years have seen many changes happening around us. The way in which a member of the public is treated here is certainly a key issue. We have become increasingly concerned about the safety of members, staff and visitors to the building. We as staff are here to support your decisions and offer assistance, as required, in identifying existing problems, with suggestions and possible solutions. We sincerely appreciate the opportunity to participate in this process and offer our concerns.

The Chair: Thank you, Ms Leonard. We have 55 minutes scheduled for questions and discussion relative to Ms Leonard's presentation. I'll first turn to the Liberal caucus. Are there any questions?

Mr Rick Bartolucci (Sudbury): Karyn, thank you very much. A suggestion that was I think mentioned earlier today would be with regard to controlled access entry and introduction to the building. Would you be in favour of that type of system whereby a person is greeted, is classified, is carded and then is allowed to travel to restricted areas? Or do you believe that it is important that what is in place now remain in place?

Mrs Leonard: I feel that once you decide on the philosophy of what you want conveyed to the public, anything is possible. Attitude, training, communication: All of those issues are very key in our estimation, as the people who do operate the inquiry centre and the primary public access to the building. So yes, I can see whatever your choice is working very well, as long as all of the follow-up steps are followed very closely, and monitored.

Interjection: A discreet answer.

Mr Bartolucci: You know, it was a nice answer, but there's a message in the answer that's worth a follow-up and an appreciation for the answer. I'm going to ask you for an opinion that's unbiased, truly an unbiased opinion. You've had the experience of being here for a longer period of time than I and several of the committee members. Do you believe that permanent barriers have caused some of the anxiety with visitors as well as with staff over the course of the last little while?

Mrs Leonard: I believe that many things have changed in the last 20 years. I first came to this Legislature as a staff member, as a tour guide actually, in 1976.

I believe that not only has the quality of visitor changed, the intent of the visitor changed; the people who work in this building have certainly changed over the years. But all of those things I don't feel are necessarily controlled by putting up permanent barriers. That is a personal opinion, in a very non-partisan way.

Over the years a number of things have changed: The way in which demonstrations access the building or don't access the building, how they are controlled—all of those things, as all of you know, have changed. Locations of barriers: When I first came here barriers would be taken outside. They were not permanent installations. I'm not the one to judge whether that be correct or not correct. Sometimes perception is what people will deal with and certainly there have been many changes, for a variety of reasons, construction being one of them, the numbers of people coming to the building, the limitations of parking. All of those things have had an impact.

1110

Mr Bartolucci: I respect your honesty so much and I appreciate it. These are points that I'll pursue later when we discuss the two areas that we visited as a subcommittee. Do you think it essential for a demonstration to be subject to a permit before it could take place, either through a municipality, through the Legislative Assembly or through a particular arm of the municipality such as the police services?

Mrs Leonard: I can only speak to what happens here, and it is only just recently that we have been charged with the responsibility of issuing the permits, if you wish, for demonstrations to take place. As I mentioned before, those demonstrations are only given permission if they are sponsored by a member. We feel that it's a better control mechanism in terms of people not all showing up at the same time. Through the operational side of things, we have been able to actually have demonstrators and demonstrations scheduled at different times of the day, and for the most part I have to say they've been extremely cooperative. If you tell them, "I'm sorry, we have a demonstration booked for 12 noon; could you possibly take 12:30, could you take 1 o'clock, could you move it into the morning?" they are usually very accommodating in that way. They do appreciate the consideration and the assistance that they receive, whether it be a sound system or whatever it is. We have thank you letters on file that tell us of that appreciation.

Mr Morin: You mentioned that people who plan to demonstrate ask for an authorization. Were you asked for authorization yesterday?

Mrs Leonard: Yes, we were.

Mr Morin: Was it sponsored by a member?

Mrs Leonard: It was sponsored by a member. I don't have the name of that member available at the moment, but I'll be glad to get it for you. I can get it very quickly, and a copy of that permit. I must say that the organizers of that particular demonstration have expressed a very deep concern about what happened.

Mr Morin: When a demonstration takes place, because I just want to know, does the member have a very close rapport with the demonstrators? Is it done in a sort of constructive way? Is there advice given by the member to

the demonstrators as to how they should behave, how they should contain themselves?

Mrs Leonard: I can't answer that. I don't know the information that would be conveyed from a member's office. All we see is a copy of the letter that comes to our office indicating support for the demonstrators.

Mr Miclash: In terms of your experience in the building, would you feel a little bit safer if the person you were facing, say, in any part of the building were wearing an identification pass with, as I indicated earlier, a colour code of some sort and you had access to know that a certain colour would mean something? Would you find that employees around here would feel safer should they be faced with that?

Mrs Leonard: I feel the employees in this building would likely feel safer. It's a little bit different for us, because we are very accustomed to dealing with any number of irate people, any number of very polite, kind people who want to visit; we have such a diverse clientele. But in talking to people whom I work with who are not necessarily exposed to that every day, they would likely feel much safer, yes.

Mr David S. Cooke (Windsor-Riverside): I must say I have an aversion to the idea of classifying people, even the term "classifying people." What I'm trying to understand, not only through this committee process but other people whom I'm been talking to who work in this building, the fear that people have. How much of it is real? In other words, has it got a basis for it and how much of it is, quite frankly, because things are getting more and more hyped up around this place? I guess what I wouldn't mind your reaction to is, the breaches of security that have occurred, the so-called breaches, whatever the heck that means, haven't been as a result of individual members, that I'm aware of, coming in the building. It's been a couple of demonstrations, one in 1988 and one yesterday, that might have gotten out of control. Are you aware of a lot of individual incidents so that even though staff might feel safer if people were classified and had colour codes on, would that be addressing a real problem in your view or is that a perceived problem?

Mrs Leonard: I feel you're right in terms of numbers. There are certain events that are going to take place in and around any parliament building, in and around any government building, and those events here, I feel, have not escalated to a point that it's out of control. Again, I have to say that's a personal opinion based on the experience that we have as the public relations corps in this building.

If you're asking do I feel that we have more than what we've had before, I'm not sure we have. I have no statistics to back this up. I can give you statistics on numbers of visitors, types of visitors, where they come from, all of those, but I can't give you, for instance, security-type statistics that would indicate how many people have been stopped on the front steps. We have many, many people who come through the lobby to the front counter and who are very upset, but most situations like that can be defused if they're handled in a professional way and people feel that they're being helped.

Mr Cooke: One of the things whenever the discussion of security has come up in caucuses—you've been here 20 years; I've been here going on 19 years—has always been that, quite frankly, if somebody is going to threaten members, there is no security that can ever be arranged in our constituency offices. That doesn't address your concern, but for members, we've got to get real.

The demonstrations that take place, I hope that we wouldn't be getting into a position where we'd be somehow trying to regulate demonstrations, because I don't think it's possible, quite frankly. But the sponsorship is irrelevant, right? I mean, when a member sponsors a demonstration, it's a procedure you have to go through and that's about all it is. Somebody has to sign or say, "Yes, we'll sponsor that demonstration."

Mrs Leonard: It has been a policy and a procedure that we have inherited and we have adhered to because our role on behalf of the Speaker is to try to organize things so they work well rather than have mass chaos or, as we've had before, differing groups who all want the microphone at the same time. It's really been an administrative question and a way of handling it from an administrative standpoint.

Mr Cooke: I don't know how long that policy has been in place, but no one ever came to me as a new member that I can recall and said, "If you're going to sponsor a demonstration out front, you have a particular responsibility to make sure that the demonstrators are going to behave." Not that I could give that guarantee. Who could ever give that guarantee?

We were crazy enough when we were in government that I think some of our backbenchers probably went through the procedure to sponsor demonstrations that were demonstrating against our own government. People have a right to demonstrate, whether you agree with them or not, and if the procedure is that a member has to sign for that, then that's what's going to happen.

Mr Pouliot: It's the same people.

1120

Mr Cooke: It's the same people. I have one question about the people who are visiting the building and so forth. If I recall, one of the major problems that we have would take money to resolve, and that is the redesign of the front entrance. A few years ago, we were looking at putting enough money in there that there would be an entrance that would go into the basement, especially for tours that were taking place, and there would be a reception area and then, I guess, other people visiting the building would go through the current entrance. Would I be correct in assuming that unless the dollars are available to redesign that front entrance, anything that we attempt to do in terms of controlling access is going to be a little bit haphazard since that front of the building was never designed for the hundreds of thousands of people who now visit this place?

Mrs Leonard: I think the key is likely in designating entrances for a variety of purposes. If your access point for all the public coming in is going to be the front door—primarily now, I would have to say that 80% of the visitors to this building do come through the front door. Many staff do, but more so, you yourselves know that your own staff and yourselves will likely use another

entrance because of the congestion at the front door as much as anything.

Yes, certainly redesign was discussed a couple of years ago and part of a plan, but that would solve other issues related to access to galleries for students—the numbers of bags and packages and Walkmans and all of these parcels that somehow have to be looked after when students come into the building. At the moment, we're looking at baskets that have lids on them that will allow us to have a safe control over the number of Walkmans and personal belongings—many computers that students actually bring in and they're not allowed to take into the House, as you know. Those are definitely logistical issues that we are trying to come to terms with without spending dollars.

The Chair: Mr Cooke, just by way of information, I think it's fair to point out that the subcommittee found in Ottawa that at least at some of the demonstrations that happen where there's a member who has sponsored the demonstration, that member's name is sent to the Speaker, as well as the party leader for that member. You can draw your own conclusion as to why that is, but it would appear to be an effort to provide some measure of accountability for what actually goes on in terms of the demonstration.

Mr Cooke: I wouldn't mind taking a look at it if there's an actual written part to that policy. Obviously I wasn't there in Ottawa or Quebec, but the difficulty that I would have would be, what would be the implication if in fact there was ever a policy put in place that those who didn't have a sponsorship couldn't demonstrate? Well, it would mean nothing, because people would still demonstrate out front and they'd be more upset. I still argue that one of the problems that we had on opening day was the fact that nobody was authorized to have a demonstration. There was nobody authorized to have a demonstration on the throne speech day, because the Sergeant at Arms said there were a number of people who had applied, and since they all couldn't be accommodated, nobody was going to be authorized, and we had a demonstration that resulted in the building being closed.

Mr Pouliot: I couldn't agree more. Again, the right to demonstrate, be it at the Washington Monument—you know, it's a democracy. We ought to deal with it. If people cannot, for whatever reason, demonstrate democratically without endangering and while respecting everybody else's ideas, then you demonstrate by remote control. It is just as simple as that. If you don't have a venue, you will find a venue.

The sponsorship, be it the sponsorship, will you behave? You can sign all kinds of documents. It could be almost any group. It certainly can be any individuals. Be it you get a permit or a sponsor, at the end of the day when you look at the results of the exercise it's the same. I'm not aware of anyone who will sponsor, lend his name to, be associated with any group or individual who will not "behave in accordance with" the statutes. When you give a permit, who do you give the permit to? You give it to this organization, while you say to the other organization, "You won't have it"? The person with the permit will make an alliance. They'll have to live with one, whether they like it or not, because people will show.

I have some difficulties with anything that will endanger, that will jeopardize the right of people to be full democrats and to express themselves. It's costing them an arm and a leg. They're paying for all this anyway. It's their building. There's only one taxpayer. Satisfied or not, let them come to Queen's Park. I'm not going to question the quality. The quality has changed over the last 20 years. My father was here about 22 years ago and my mother was here last year. We could do a lot with that.

The Chair: Do you have a question?

Mr Pouliot: It's my time, sir. Whether I have a question or not, it's my privilege. I appreciate your courtesy, Mr Chair.

A tour bus comes in with 60 people. You see them every day. I don't know what percentage is organized tours, but a lot is. They come in from all over the world, if you were to look at the background of the people. Our eyes tell us that. People have one hour to come into the building, because after this they'll go to the Casa. They're mostly organized tours. They're not going to spend their whole day at Queen's Park. Do you deal with the bus operator or do you deal with every individual on the bus? If the bus is only here for one hour to visit Queen's Park, what do you do?

Mrs Leonard: There are many different situations. In some cases we have to deal with the tour operators. We have tried to identify who those tour operators are, whether it be the ones that are scheduled for booked programs here or the ones of those 35 to 40 that on summer mornings and late afternoons I'm sure you've had occasion to see. We're dealing with the operator in some cases. In the case of students you're dealing usually with a teacher who is bringing them here as part of the Ontario Young Travellers program or as part of the curriculum that they're studying. So you're dealing with a wide variety.

Mr Pouliot: I would like to know what is being done elsewhere, because they have the same privilege, for instance, tourists come in, we all have schools in our ridings and they come in. Almost inevitably you take a picture, say, "Bye-bye, thank you for visiting Queen's Park." There's always a time limitation, for other groups are coming in as well and you only have so many guides. They're going elsewhere; they came from someplace else.

What do you do in terms of, as asked for in the proposal, everybody gets a badge, everybody has to register? I don't know. I'm at a loss here. You only have one hour to do so. When am I going to tour the building? What kind of system can accommodate that and at what cost? That's another challenge we have. Are you offering a suggestion?

You come in and you see five buses there, and I'm listening outside there, satisfying one of my many vices. I have a cigarette—I blame the government; I used to blame the opposition. I see people come in and they speak German and I see people come in and they speak Japanese. Then another bus comes in. Especially in spring and summer there a lot of people here. Then you see them coming out again and another bus comes in. Who has the responsibility at the individual level? Would they register, and how is that handled? I keep in mind that they have one hour only in the building.

Mrs Leonard: We feel we have a fairly good system in place to handle those groups of students and senior citizens and private groups that are coming in as a group, because those groups are pre-registered, they already have a confirmation, they know exactly what their program is. We don't really feel that those groups are a problem from our standpoint. They do receive individual passes to go into the public gallery if indeed they're returning to the House for a session in the afternoon. So there is that process where they all have an individual pass.

The groups that are coming in unannounced that are part of this dropoff point or sightseeing tour of Toronto or Ontario are now handled under this temporary visitor pass system. There is no way we can handle the numbers that come to the front of this building. They all want to see the chamber, and they all want to see it at the same time. Those are more the issues that we're trying to come to terms with while still welcoming them and making them feel that they've not been turned away at the door, if indeed that is the decision that you make.

We are a multilingual unit. We do address the concerns and the questions in a variety of languages. We try to do the best we possibly can with those people, and they are limited by wearing a pass. Only their leader wears a pass, not all the members of the group, and they do keep the groups together, because they're used to making stops like this. This is one of many stops they make in the course of a day. I'm not sure if that addresses your issue.

1130

Mr Pouliot: Karyn, I don't know whether it's fair or not to ask you, but I don't know who else to ask at this time. We're in the chamber now and you have, if you will, not a caucuses' gallery but east-west, and then you have a public gallery. You issue passes and those passes are sponsored by the members.

Mr Morin: No.

Mr Pouliot: They're not?

Mr Morin: Only the galleries.

Mr Pouliot: Okay, thank you. Only the gallery on the side. That's why they don't applaud as much or boo as much as the other one upstairs.

It is very, very difficult, because I know which bill is coming through and I recognize some of the people, because you see them in the newspaper. They start chanting and so on and they get ejected, and I really feel bad. I'm not going to get up because I can't get the attention of the Speaker. The honourable Speaker will not recognize me on a point of order, so I cannot say I want to make a plea: "Stop, stop, stop. I've just signed your pass." You can appreciate my dilemma. In fact I go this way, "Stop it," and the Speaker will not recognize me.

Would you appreciate being asked that the people who work—I call it protocol—downstairs be given some guidelines by the committee and come back with a report? You're the front line. You see it more often than most people do. You work right there with your colleagues.

Mrs Leonard: We would be more than happy to participate in that process, if you would like to clearly define what issues you would like to hear from us on.

Mr Pouliot: You know what works. You can take a concept and then bring it down to the floor and say,

"Yes, this will work, but we have to twist it because in the real world we might need some amendments."

The Chair: Thank you, Mr Pouliot. I have four questions here from the Conservative caucus. First Mr O'Toole, then Mr Hastings, Mr Grimmatt and Mr Froese.

Mr O'Toole: I'll be brief, because I want other members here to have a chance. The first thing is, we heard repeatedly at Quebec and in Ottawa, and I'm sure you have contact with your peers in those areas, a couple of things that they—and I really thought it was an important priority. They're mainly people like yourself. They're involved with safety. It's first in their minds, it really is, for the staff, for the members and for the visitors. They all said that in the very opening.

The next thing they all said is how important it was to be friendly, to greet, to be non-hostile. They did that in Quebec where in fact even the police were trained, and even though they were carrying side-arms, they were jovial, and not because we were there. They were specifically personality-suited to the job. They addressed and said that, in training, PR was very important. Much of what you said this morning, Karyn, is reinforcing that, the importance of being accessible in that position.

I don't think anyone in this committee would disagree with a person's right to demonstrate. I'm not speaking for everyone, but on either side, I don't think it's our right, or even something within our mandate at all, to do anything to forgo a person's ability to demonstrate. That being said, I have a specific question. Do you think that demonstrations of whatever stature should occur inside the building?

Mrs Leonard: I feel from a safety aspect, for all concerned, that demonstrations should not likely occur inside any building. Yesterday we had a prime example where we had a lot of damage in the main lobby, as I know you are aware this morning. But on the other hand, there are occasions where demonstrators who are part of the group outside those doors are brought inside by a member or by someone who is sponsoring them to discuss with them, and that's a different issue. But when it comes to what happened yesterday, then of course I can't agree with that in principle because there's destruction.

Mr O'Toole: I don't think anyone does, and all we're trying to do is be reasonable. I think that's the balance. It's difficult to print in specific language what constitutes an unacceptable demonstration. That's really the problem, which we will not solve, I don't think. Clearly, in each one, in the Canadian federal governments, there were no, period, demonstrations inside, and the same in Quebec. They all said categorically it has no place in the house of the people for a group to hold hostage, whatever their ethics or whatever their ideologies. No hostage kind of thing, because that's what it is. It's capturing the media, the people's attention. So I hear you on that one.

Do you agree that there should be limited doors available to the general public?

Mrs Leonard: Yes, I do.

Mr O'Toole: Good. That's a no-brainer, in my view. It's been done everywhere. Can it be handled? Absolutely. Certainement. I'll tell you why. They handle a million in Ottawa through one set of doors. It's a no-brainer. If you're going to be paying security people over \$50,000,

they'll figure it out, okay? It's being done all over the world. That question is rhetorical and has no thought basis, and I want to be very clear on that. I've seen it and it's manageable.

The idea of permits: Do you think that's something we should expect in the final protocol here, permits for demonstrations, so that someone will assume some sense of responsibility for it? In Ottawa, for example, with no permit, bye-bye. The RCMP will move your tepee or whatever it is. There are no demonstrations without a permit, period. That's the Canadian capital. What's your view on that? Not to limit it, but they must conform to some sense of respect for the rest of the community.

Mrs Leonard: I feel that is your decision as members of this assembly. What you choose to have happen onsite and how you choose to have it happen is in your hands. Demonstrations here, as I've said, the way that was chosen some time ago to manage demonstrations was to ask them to obtain permission, with sponsorship. It has worked fairly well. It's only when that demonstration that was never permitted to be inside—permission at no time was ever given by a member or by anyone else to take place inside—it's when something happens that none of us like to see happen that the trouble erupts and you have damage and what not.

But we've never had a situation of ever condoning or allowing, to my knowledge, demonstrators to demonstrate inside a building. I'm sure you've all been there in the lobby when things have been removed from people. We have often stacks of signs and things like that. Demonstrators are invited to come in as a guest of someone. They're not invited to come in to demonstrate.

Mr O'Toole: I'll just make one last point, and I appreciate this. This is tough, but you've got 20 years' experience at this and I respect your answer. Outside of the current government of Ontario, would you agree, whether it's Oklahoma City or the incidents in Israel or the incidents in France or wherever, that the function of demonstrating in the world has been heightened and has definitely changed? Whether it's the seals or whatever it is, there's a plethora of issues.

Would you agree, whether it's the 6 o'clock news or whatever it is, that there are more demonstrations, or at least the threat of violence or violent action, whether it's Oklahoma City or whether it's the attempt on Jean Chrétien? We don't have to look very far, and it's happening every single day—Charlottetown. Would you agree, in 20 years, that it now has changed, that there's a fundamental change that's been made?

Mrs Leonard: I would not feel comfortable saying that something had changed because I feel that the circumstances have changed significantly. Twenty years ago we didn't have the telecommunications, we didn't have the media. We didn't have the same sorts of information highways that we have today.

1140

Mr O'Toole: The 6 o'clock news. All-news channels.

Mrs Leonard: That definitely has changed. I would never presume to judge that anything else has necessarily changed, but certainly our information highways have changed. I've had the pleasure of working for six different administrations and seeing the changes that have

taken place in everything around us, and things are changing. Nothing is the same or very few things are like the same as they were 20 years ago.

Mr John Hastings (Etobicoke-Rexdale): Mrs Leonard, how would you rate the type of visitor today in terms of civility from 1 to 10, if you use 10 as the most excellent or the most interesting person to have dinner with down to 1, which would be probably the nastiest?

Mrs Leonard: I feel very strongly that we continue to have a very interested visitor. People don't visit legislatures if they don't want to be here. Many of us, when we travel, make the Parliament of that country or that state, wherever it happens to be, a town, that part of our reason for visiting. We make that one stop on our tourist run.

Most of the visitors, I have to say that 85%, 90% of the people who come to this building, are positive. They are pleasant people to deal with. That doesn't just include the tourists. That includes most of the citizens of this province who come, many with very, very major reasons for being here and looking for assistance. They welcome someone with a smile for them, someone who doesn't challenge them automatically as to why they're there but rather respects the fact that they've come up those front steps or they've come in one entrance or another and they need an answer or assistance or direction.

Mr Hastings: Could you supply us this afternoon the name of the member who sponsored yesterday's group?

Mrs Leonard: Certainly.

Mr Hastings: You were mentioning or Mr Cooke mentioned that at one time they were looking at having a different way visitors and tourists could enter the building besides the way we do it now, by diverting them down into the bottom floor. Are there architectural plans and/or is there a report in Ms Speakman's office—I presume it would be there—that the committee could get a look at as to when—

Mrs Leonard: By all means. I will pass that request along. All of those things do exist, yes, including costs.

Mr Hastings: When was that done?

Mrs Leonard: That was done as part of the master planning for the building, which has been in existence for several years now and the various stages, such as you've seen around you, and we've been a construction site off and on now for the past few years. Those things do exist.

Mr Hastings: My final question relates to the hiring of your staff. Is there any type of specific human resources personality tests, not the old Minnesota inventory personality test or whatever that thing was called, but other more updated types of personality or character or attitude, or whatever you want to call it, type of stuff that human resources in this building is using to determine the type of guide or host that is now hired compared to when you started 20 years ago, or is it still basically done on a pleasantness scale?

Mrs Leonard: It's done on a variety of bases. We do not have a formal personality analysis, such as the Myers-Briggs or anything of that nature. It certainly does not exist here as a testing mechanism. When we are hiring information officers, and that includes the summer tour guides we hire as well, it's done on an analysis of skills, knowledge, background, experience, assessment as to personal suitability.

Questions are asked concerning how an individual might handle a certain type of question and those scenarios where we want to analyse the response involve how an individual is going to handle an irate customer. How are they going to handle a teacher who's here with a group. They thought they had a confirmation and they don't have a confirmation with us, but we all have to come to terms with this.

We don't want to send people out the front door at this point. That's not our mandate. We want them to feel that they've been welcomed to the building and that somehow we have met their need to visit the building, whether we can simply go outside and take them on a tour of the statues and monuments, whether we can bring them inside, sit them down and hopefully have someone come to talk to them, whether it be their member if their member were available, or someone from staff who could give them a little bit of background.

It's a very formal type of interview process, but what we're looking for are particular skills and particular ability to analyse a customer or a client, a person with a problem and come up with what we feel is the best answer on behalf of this Legislative Assembly.

Mr Hastings: In those architectural drawings, I suppose you were involved to some extent in how it would be positioned because your staff and you would be directly affected?

Mrs Leonard: Yes.

Mr Hastings: Could you give us a rough estimate whether that new location would be directly below the main foyer?

Mrs Leonard: The plans were originally to be where the dining room is currently located. The intent was to allow accessibility for those who are not able to deal with stairs such as we have at the front of the building. It gave an option to bring people in at the front for the physically challenged, as well as the large groups that take up so much room in that main lobby and are difficult at times. It is a working environment.

I know there will be many times when you're walking the halls and you'll wonder, "Why on earth is all this noise here?" and it's because at one time we might have 1,000 students in the lobby. They're all going in different directions and they're all being managed, but a noise level of students when there are anywhere from probably 12 to 16 is very difficult to control. That was all part of the process.

The other part of the process was this whole issue of what kids today seem to carry with them in backpacks and coats and all of the issues that can arise—security issues obviously. We have taken things like knives and dangerous objects away from kids. That's an everyday occurrence here when the House is in session. When you collect all the metal objects, you'd be amazed at what's in that basket. There has to be a way of doing that and a way of securing those belongings so that when the kids come back, they then can obtain their own things because things do go missing.

Mr Bill Grimmett (Muskoka-Georgian Bay): Ms Leonard, I wonder if you could tell us, we've heard the figure of 250,000 visitors a year. Are the numbers of visitors increasing to this place?

Mrs Leonard: The numbers have gone up and down over the years and part of the reason for that has been the construction that we had at the front of the building for some time. The numbers of people actually coming into the Toronto area, to our knowledge, has not gone down. The number of people wanting to visit this site has not gone down. At different times, the numbers we've been able to record have gone down and that, as I said, is for a variety of reasons.

If a bus driver's not familiar with the area and they don't realize they could at one time come in through the east door, they're likely to drive on by. They won't stop. For the most part our tours have not decreased. Tourism here in this building has not decreased.

1150

Mr Grimmett: I have a particular interest and responsibility for tourism in the province and I think we should consider that as part of this whole security review because in addition to being a public place and a civic treasure, this is a genuine and very significant tourist attraction. I wonder if you could perhaps take this opportunity to give our committee some advice on what you think we should consider in trying to enhance the attraction of this property to the public. Are there certain things that you think could be done here that perhaps you don't get the opportunity to comment on because of the chain of command that exists?

For example, I just want to touch on one thing. In speaking to my colleague, I understand that in Ottawa the costumed, uniformed RCMP are not always present, but I remember from my visits there as a student everyone would rush up to get a photograph taken with the RCMP officer in dress uniform. That's just one option I'd ask you to consider.

Mrs Leonard: It would take me much longer than what time we have this morning, I'm sure, to fully answer you, but I must say that over the years we've done a number of different things to enhance tourism here. The year of our centennial was a very highly successful year. We did a lot of public programming. We had a few extra dollars to celebrate that centennial, quite frankly, that allowed us to do that. We also did a lot of cost-recovery-type programs.

Since we've had obvious reductions in different areas, we've been able to carry on with some of that. We do have costumed interpreters here in the building. If time allows and if the staff numbers and the demands allow, they do that sort of thing. They go outside; they greet. There are all kinds of ways that, yes, we probably could enhance a visitor's experience, encourage the numbers, encourage that whole area. We have a very beautiful site here in the middle of this city. Things like bus parking are a major issue. That's only just one that exists here. There are many other ones I'd be more than happy to give you at another time.

Mr Grimmett: I was thinking more, in particular, if we do choose to enhance the security arrangements, are there tourist opportunities inherent in that?

Mrs Leonard: Possibly. There is quite a history to this. At one time we had the Queen's Own Rifles, for instance, in the small boxes down at the front doors that did a rotation and a drill, basically, at one time. There

were some issues. Again, I don't think time allows me to go into those this morning, but I do believe that, yes, there are lots of opportunities that could be used to work in conjunction with an enhancement in security and an enhancement in terms of how the visitor is actually welcomed to the site.

Mr Tom Froese (St Catharines-Brock): Ms Leonard, thanks for your presentation. You certainly have diplomatically answered some questions that were very tough and I appreciate that. I'll try and keep my comments brief because some of the questions have been answered already.

I'd like to go back to the demonstrations area. I think it's perceived, some of the things that have been said before, that somebody's trying to limit demonstrations, or that in this process we're looking to limit demonstrations. I don't think that's the case at all. I think everybody has a right to demonstrate, but it's how they demonstrate.

When demonstrations are being done, and in life in general, we're all accountable and responsible for what we do. I personally believe that to some degree the member has a responsibility, if they're sponsoring a demonstration, to influence—they can't control everything, I understand that, but they have a high degree of influence when they're sponsoring a demonstration. I believe that wholeheartedly. The member can say something like: "What is your demonstration going to be? How is it going to be run?" Especially now, in what's happening, there is absolutely no reason to have what we're having now, windows smashed, damage to property. I think it's important and pressure should be put on members as far as sponsoring groups are concerned. I understand that's probably not in your realm. It's for us as members to understand that.

That being said, there needs to be a balance as well, and the member can't control it. If we change the process whereby there's controlled access to the building, how do we educate the public—if you can just give several comments—to say that there's a change being made and that it's still open to the public, because the fear right away is that if the legislative committee makes recommendations to the Speaker and things change all of a sudden, it's right away that we're closing up shop, and that's not the point at all. We clearly can't have happen what's been happening and something has to be done. What are some of your suggestions as far as how we educate the public is concerned? How you feel we can go about doing that?

Mrs Leonard: If I could clarify, are you speaking about the demonstrations that come or the general public who would be coming in?

Mr Froese: Both.

Mrs Leonard: I must say, to make it clear from an administration standpoint, we neither encourage nor discourage visitors or demonstrators who wish to come; we merely manage and try to assist. It's very labour-intensive and it's very critical in terms of how that is all handled, because we're working usually with a member's office, with your staff. We're working with a representative who wants to organize a demonstration, and 9.5 times out of 10 that representative is very anxious that this all work in a positive way, just as yesterday the

organizers pleaded with the demonstrators to have a peaceful demonstration, getting up and saying: "This is not why we're here. We're not here to destroy."

I think you're doing everything there that you can do in more ways than one. There are some physical things that can be considered outside that likely you will want to look at when you're considering how you're going to handle this.

In terms of the visitor coming in, I firmly believe that if you make the decision that you want this building to be accessible to the public and that you want it to be a positive experience the visitor has, regardless of where that visitor comes from, regardless of why they're here, I believe, because I'm in the public relations business, that you can market those things if you communicate. It's the same as communicating an evacuation plan, for instance. If that is communicated and everyone knows ahead of time what is expected, how it's done, why certain things are done, the chances are that your problems will diminish. After a couple of times of people being told and informed, they're not going to wonder any more. We all question what we're not familiar with.

I think we can do many things that will positively increase the numbers that come to this building, the numbers that come here. We have a constant demand wanting to have exhibits, wanting to come here, wanting to participate in programs, and these are not just the free education programs that go on, these are any of the ones that we've done on a cost-recovery basis: Victorian tea and tours and birthday parties on the lawn that we did for the centennial of the building. All of those items have been highly successful items. Our gift shop is a highly successful area. We would of course like to increase revenue there, and if we decrease the numbers of people coming into the building, we can't increase the revenue.

We're very anxious to work, and I do feel it's something that can be accomplished with the right type of direction from the Legislative Assembly. The management of something like that I think will benefit all.

The Chair: Thank you very much, Ms Leonard, for your presentation. We appreciate your advice.

We're just about ready to recess for lunch. I want at this time to thank Peter for putting together his presentation. As I said, I know he worked late into the evening last night, and we appreciate also Lisa's assistance as clerk of the committee on the trip we made in the last couple of days.

Two other points I want to raise with committee members: The Chair has requested that Hansard expedite its account of this morning's proceedings so that all members of the committee will have an opportunity to review Peter's submission in writing and then we'll have a framework for better discussions next week. Lastly, I want to inform the committee members that we'll start again this afternoon at 2 o'clock; I think an earlier agenda said 1 o'clock.

The committee recessed from 1200 to 1402.

The Chair: We're resuming our discussions on the issue of security in the Legislative Assembly precinct. We have as a guest this afternoon the MPP for Mississauga South, Mrs Margaret Marland. Thank you very much,

Mrs Marland, for coming in today. We look forward to your presentation.

Mrs Margaret Marland (Mississauga South): I appreciate very much the invitation to appear before the Legislative Assembly committee while you are dealing with this very important matter, because it has long been a concern of mine, the matter of security in this building and in fact the whole legislative precinct.

Interruption.

Mrs Marland: I realize that we have an important event going on in the room next door, so I hope you will be able to hear me over that noise.

My concern for the security measures in the legislative precinct has actually escalated in the last two years. As you may know, I've been here 11 years now.

Interruption.

Mr Morin: On a point of order, Mr Chairman: I don't think it's fair for our witness to have to deal with this noise. Perhaps we could wait or find out how long it will go, so that we can hear Margaret well.

The Chair: I appreciate that suggestion. Is that satisfactory to you, Mrs Marland?

Mrs Marland: I appreciate the suggestion too. Thank you.

The Chair: Why don't we recess for five minutes.

Mrs Marland: I could actually come back next week. Are you still dealing with it next week?

The Chair: Yes. We could recess for, say, five minutes to see. We might be able to resume at 2:30.

Mrs Marland: You have someone else coming at 2:30, don't you?

The Chair: We already have John O'Toole here and he's going to be expressing additional—

Mr Dave Boushy (Sarnia): We could hear him now.

The Chair: I don't know how long the pep rally's going to last.

Mrs Marland: I'm sitting concurrently on another committee that's immediately below this committee room this afternoon, so if you would like me to come back next week, I can come back next week.

The Chair: Okay, what we'll try and do is have a recess for half an hour and then, Mr O'Toole, we'll look to you to provide some of your information on behalf of the Conservative caucus, and if Mrs Marland is able to return to the committee next week, we will be able to hear from her and her point of view.

Mrs Marland: I definitely would like to fulfil the opportunity, so I'll leave it to the clerk to schedule it with my office and I'll look forward to seeing you next week.

The Chair: Thank you very much. The committee is in recess until 2:30.

The committee recessed from 1407 to 1437.

The Chair: The committee will resume yet again. We are at the point in time where the Progressive Conservative caucus has some time to express its views, concerns, ideas on the issue of security. I'd like to recognize Mr O'Toole.

Mr O'Toole: I was listening with great anticipation to hear Margaret Marland speak this afternoon, and it may steal a little bit from my reason for wanting to speak. I first want to raise the point that I had made back on

December 13 with regard to a resolution that was carried to look at decorum, that the issue on a broader scale be described as decorum in the House by members. In that respect, I'm looking at proposing perhaps an amendment to the standing orders that would allow members to abstain from voting. That procedural issue is, to me, an attempt on both parts to expedite the business of the House and not to detract from any members to make statements with regard to debate. That's the primary reason I want to address it. I've heard it repeatedly from members of our caucus and before, during and after any incident that may have precipitated me moving that motion during our last committee. So that's the main issue here.

If I may continue, I did raise this at each of the parliaments or Houses that we visited in the last couple of days, and the general response I got was that members were not encouraged and not permitted to demonstrate. In fact, demonstrations in the House were pretty much curtailed. I guess demonstration takes many forms, one of those forms being a reluctance or unwillingness to participate in debate, which is totally within the standing orders and permissions.

I'm not speaking on behalf of caucus; I wouldn't be so presumptive as to do that. Margaret would have done a much better job of that than myself.

Without extending the time here, that's pretty well the only point I wanted to make. There was a resolution passed. How is the committee going to deal with that in the context of this report dealing with security?

The Chair: Do members wish to make any comments with respect to Mr O'Toole's submission?

Mr Pouliot: I simply would like to be the benefactor or the recipient of the resolution.

The Chair: Do you have any copies of it with you?

Mr O'Toole: I don't have copies with me, but I certainly would make sure that the Chair or the clerk has a copy and is able to—

The Chair: The clerk is attempting to get a copy of the resolution and we'll make copies available when possible.

Mr O'Toole: Well, I'll read it in the interim. It says:

"I move that the standing committee on the Legislative Assembly be authorized to review and report on the issue of decorum in the Legislature as well as the disciplinary powers of the Speaker. An examination of these processes both in Ontario and in other legislative precincts will be necessary.

"Furthermore, as the standing committee on the Legislative Assembly is currently reviewing other security and related issues, it may be appropriate to include this concern at the same time—because we'll be dealing with many of the same people.

"This review by the standing committee on the Legislative Assembly will be authorized to examine, among other things:

"The authority of the Speaker to name members; use of force by the Sergeant at Arms to eject members who have contravened the standing orders, been named by the Speaker, refused to obey the Speaker and refused to leave" the House.

"Also, the current standing orders which compel members present in the Legislature to vote (for or against). This also applies to votes during a division or any other vote as called by the Speaker.

"The committee will examine other relevant standing orders: points of privilege and points of order.

"In other cases we will consider other jurisdictions.

"Furthermore, I move a motion that the standing committee on the Legislative Assembly be authorized to meet as a committee during the intersession.

"I think it's that important to react responsibly and quickly to the statements by members and the press and people watching the parliamentary channel in this province. I know I speak for other members, that this has to be checked immediately and quickly. I, for one, am not going to sit by and watch democracy completely destroyed and defaced."

It was a handwritten submission. It was done sort of self-motivated and it is a broader thing. I think it's members making statements. It even deals with the television. The particular angles of the television are such that it would perhaps mislead the public; and there is a wide audience, it's my understanding, of the parliamentary channel. I suspect if we could just move the angle out a little bit more to sort of show that there are a lot of kind of dynamics occurring in the House, it would give the people whom we are all trying to represent an opportunity to have a little broader understanding of what's going on in the Legislature itself: movement, gestures, other kinds of things that are going on in the House.

I'll conclude with those remarks.

The Chair: All right. Questions?

Mr Bartolucci: Just a comment: Certainly I appreciate that that motion was carried and at the appropriate time I believe full debate should be given to that section of what our mandate is. I would suggest, though, that at this point in time we're talking about security and safety, and so as not to take away from either decorum or security, maybe if we dealt with one of these very important items at a time it would probably be a more logical and more productive way to go. I don't think it's out of order certainly, because it's a part of the entire resolution; if it requires more time of this committee, then I suggest we give it more time. I would suggest, though, at this particular time the appropriateness of the decorum issue being brought in would probably be lessened if we were to jump from security to decorum, from safety to procedure etc. So at this point in time I would move or suggest that we certainly deal with that, as the motion says, but at an appropriate time, which would probably be later on.

The Chair: Is that a motion or a suggestion?

Mr Bartolucci: At this point in time it would be a suggestion.

The Chair: Mr Stewart, you had a comment?

Mr R. Gary Stewart (Peterborough): Yes, I did. I think that we have to look at the big picture on this, and when we talk about decorum and procedure I believe that there are members who, in the few short months I've been here, have a tendency—and I hate to use the word—to incite people to riot in that House. Those are very

strong words, and I'm sorry, but I believe that's what it is. A perfect example was when Bill 26 was passed, and a couple before that. I think we have to look at the total picture. I appreciate what Mr Bartolucci is saying, but I believe—sorry, I'll get it right, how I pronounce that, one of these days. If I'd looked right at him, I probably could have got it.

Mr Bartolucci: "Bartolli" is way off.

Mr Stewart: I truly believe it is the big picture. I think we have to do that, because I think security in that House is of great concern. I think security is part of the procedure and the process that we're going through. I think we've got as much right as somebody of the public or whatever of getting hurt or whatever in that House as there is out in the lobby or out in the front. I'm a great believer—I've said it before in this room—of process and procedure and conduct. I can't support the motion. I think we have to look at the whole picture.

Mr Froese: I think it was a suggestion, not a motion. What Rick had said is probably correct if we're going to get tied up in this issue. But there are parts of that issue that definitely affect the security. Maybe we should have a little bit more discussion. I'd like to have Mr O'Toole explain how he sees both of those items, both the security and the decorum in the House, and maybe just elaborate a little bit more on what Mr Stewart had said, how he sees both of those issues relate to each other, because they definitely do.

Along with Mr Stewart, I believe that if the members—and this is what I had said earlier this morning. I think we, as members of the House, are going to have to put a lot more responsibility and accountability on ourselves. To what degree that is and what that balance is, I don't know either, but when we, again, sponsor demonstrations and so on, we're going to have to really think twice about what we're doing here because of the whole security issue with respect to demonstrations.

We see it in the House as well. It appears that we're controlling ourselves. We're saying, "If you as an individual member want to do whatever you want to do, who controls that?" We saw it in the House. Let's not pull any punches here. Some of the members stood up in the House and encouraged these people in the galleries to do some of the stuff they did. That was not good for security reasons, especially when we were up there and saw the slope of the gallery and how people can tumble over.

So some of the members in the House are inciting people or are encouraging people to do what they do. Now, how do we control that? It definitely has to do with security. After I said all that, I'll let Mr O'Toole address this, if he would like, and my question is primarily to him, what his opinion is about this.

Mr O'Toole: That's a very good point, to draw the relationship between the issue that we're dealing with in the broader sense, which is security, which initially creates, in my mind, the primary focus, which is demonstration, where the demonstration does evolve to a point of security both for the public, the members and staff.

The role of a member, the duty of a member eventually—let's say it this way: There's an audience. When there's an audience—the audience can be the people in the gallery; it can be the people watching the television;

it can be the media, the press gallery—I think a member who is using that stage, if you will, of the House is something, in the era of media, that needs to have some rules of understanding so that they do not precipitate or provoke a demonstration that would be ruled out of order.

As a member, to stand up and argue, I don't have a problem; to disagree, I don't have a problem. It's his or her duty. So to answer your question specifically, I think there is a relationship. When you get down to the final evolution of this, there's a relationship between a member's responsibilities. Being party to the demonstration or provoking outrage beyond an acceptable level, I think, certainly in the House, is out of order. Outside? Well, we all get elected in different ways. We carry different banners for whatever reason, and we have a duty to do that. But certainly in the Legislature there's no room for banners, T-shirts. Certainly for visitors; there shouldn't be for members.

I'm not trying to be restrictive. I recognize that in the fullness of time we may not always be in power. We probably will be, but maybe not.

1450

Interjection.

Mr O'Toole: A little humour goes a long way, Gilles. I mean that sincerely.

Interjection.

Mr O'Toole: Yes, no arrogance. Sorry about that. I apologize.

That's the relationship I draw between the wider media, the television imaging. That's the relationship. It provokes outrage. If something is done deliberately to provoke outrage—provoke it—and contribute to it, I don't think any reasonable member would agree with it.

The Chair: Thank you, Mr O'Toole. Next I have Mr Pouliot with a question or comment.

Mr Pouliot: Thank you very kindly. Yes, it's difficult, Mr O'Toole, with respect, to predict the future. Certainly the market trends for 24 hours would have most of us out of here if we were so fortunate as to be able to predict, because it would be so much good to do it that well. My colleagues here, the fine people here in terms of being the government, they thought they would be and we thought we wouldn't be, subject to change with very little notice. But the ultimate wisdom will as always prevail, and that's okay.

Two things: the subject matter that we addressed. That's what this book—the preparation, the trip that people made to compare and to find out other jurisdictions; in this case namely Quebec and Ottawa. The subject matter, the issue, the reason why we're here: security. We're fortunate because we have Gilles Morin, who for a number of years has been nothing short of, and by all accounts, very fair. That's expected of the tenure. I think it's pretty well always there, but Gilles has gone beyond the mandate in terms of equilibrium to let the members have their say and yet to enforce the rules. The statutes are there.

The decorum in the House is a matter for standing orders, rules. Decorum, that's another thing. Good manners, that's again another thing. To make a link, whether it does exist or not—and I know that Mr O'Toole and others perhaps are talking about other things, if you incite

people who are in the gallery. But in terms of the relationship between the Speaker, the referee, and the members' ability and choice to express, be it vitriolic, most times controversial—we have a constitutional monarchy. We do well with the adversarial system. A place where commoners come to debate, sanctioned by the rules, allowed by the rules and limited by the rules.

The style of members differs a great deal, and you will notice that. Some people are verbose, are eloquent. Their command and the extent of their vocabulary parallels the best of orators. Other people seek refuge by talking about the fascinating world of sewer and water with unprecedented passion. Other people portray sincerity. They perspire sincerity and you can see the perspiration. Other people feel that if they can sell their bailiwick, they can sell anything. People will use antonyms, will use synonyms to make their plea. Some people, I've heard, will even use phrases such as "economic cleansing." I've heard it said in the House. And some other people who are the recipients, or they feel very much involved, will say, "What is it that's being said?" and the next member will say, "Systematic and deliberate elimination of the less fortunate," or, "Marginalizing." We can go on and on. That's allowed, as long as the person there says it's allowed and as long as you say, "Whoa, there's a borderline."

What is difficult, and I take your point to be that, Mr O'Toole, and please correct me, is if someone says: "No wonder they're marching; expect more violence. I know there are people watching there." And the people who are watching, let them hear your voice at a different tone.

If it's a platform where you could use—and I don't know; I need your help, Gilles. I don't know what I would do in a case like this if I were in your shoes, sitting on the chair and saying: "Somebody is inciting. Listen to him speak." You have a great deal of power when you say this, and if you say, Mr Speaker, I tell the people that I can't do it by myself, because if I could, I would man the barricade, and there is a demonstration tomorrow, that is the line.

But in terms of attacking the government on the policy: fair and complete game, not because we had it done to us but because that's the way it's always been here. That's why we're elected. And then we have to be very, very careful.

But you bring me to think more than I thought I would at the beginning of my remarks. I'll stop here, because many of us would fight to the last breath to save one second here the liberty, the freedom of the individual; that's why we're here. But do you have a right to pass the line and to incite? I'll have to do some more homework. You got me there—not on the overall rule. I know very much where I stand, that if I say, "You people are this and that and that," on a matter of policies, we're out of there friends, I hope, no problem. There's a line here. Where do we restrict this to say: "Come on, you guys. I'm proud that you are here. Tell them they're a bunch of Fascists, tell them they're a bunch of bastards"? There's a big line; to me, there is.

But I'm very careful between the standing orders of the House and also the security matter elsewhere. I think

we have the beginning of a basic agreement on security; the House, be careful.

Mr Grimmatt: I hope Mr O'Toole will forgive me for not addressing a question to him, but I think perhaps one of the purposes of his being a witness today was to at least commence some discussion around the issue of decorum and the behaviour of the members. While Mr Bartolucci's point is well made, and we only have a week left, as I understand it, for this committee to sit and may not have time to have a proper discussion of the issue of behaviour in the House, I agree that we should use the time we have to do a good job on the security issue.

But I would be very disappointed if the committee session ends without us at least setting an agenda of how we're going to deal with behaviour, because I know that back in my riding I have had many phone calls, letters and questions at parties and in the street about behaviour. I haven't had any about security. I understand that it is an important issue here, but back in my riding the issue of behaviour in the House is very much in the minds of a lot of people. I think we have an obligation to deal with that issue. I think it is an issue that requires some action on the part of the members.

I'm one of those members who, quite frankly, have been disappointed by the aura in the chamber, which I had naively assumed would be in some way magnificent or in some way make me feel like I was in a place where important decisions were made, and I frankly don't feel that way. I feel more like that when I'm in this room than when I'm in the chamber. I think that can be changed, and I think we should make an effort to do that. So I would like for us at least, before we end this session, to make some decisions on how we're going to deal with behaviour.

1500

Mr Bartolucci: Certainly, I think it's a very, very valid point. I also think it's a very, very important point. I also think it should be given the time, a good amount of time, but I don't know that we should be mixing the two at this point in time.

If I could just move away for a second, I'd like to address a concern that is very much, I think, at the root of the problem with this place: The decorum inside is the direct result of what's happening outside.

Last evening, I had an opportunity to be with several university students. There were protests, as we know, all across Canada. Let me just say, my remarks are going to be short and they're not pointed at the government at all. I'm tired of people pointing fingers at other people. It accomplishes nothing. I was with a group of university students and, as you know, there were demonstrations across Canada. We spent a good bit of the time together discussing what happened here at Queen's Park yesterday.

I've been teaching for 31 years, and constantly I've tried to teach that respect is the way one must govern themselves if they are to command respect. Yesterday, when I saw our future leaders breaking down barricades, breaking down doors, I didn't blame them. I felt sorry for them, I felt sorry for the process, but I wondered what is causing a problem that makes our future leaders, our future thinkers and our future decision-makers decide that violence is the only way to get a message across. I'm a

teacher for 31 years, and I know there are people who teach at different levels, who teach at a much higher level, and certainly they must have been thinking the same thing.

Why not ask the kids? There wasn't one university student I spoke to last evening who condoned what happened, but there were a few who were taking psychology courses, and the reaction was amazing, because it's been the reaction that I've heard from members on both sides of the table. Those barricades, those permanent barricades, are a symbol to those kids. They've been a symbol to all the protestors that this place is closed to them. I firmly believe—and I'm only listening to what these university kids, these thinkers, told me. They said, "Rick, if you take down the permanent barricades and allow us or allow protestors to be a part of the building, they won't try to destroy it."

Obviously, the permanent barricades aren't working. They are sending out a lousy signal, they're sending out an incorrect signal, and every group that comes here is turning into a group that wants to show or give their message through inappropriate behaviour, or violence, or destruction, or vandalism, all of which is wrong. I'm wondering, if we remove the permanency of the barriers, if that wouldn't send a message. I think that's the most crucial issue we should be dealing with, because I think it's the basis of many of the things that are inappropriate within the House. And I agree.

I come to this Legislature as a first-time member with very, very high, idealistic views, after sitting on a regional and city council for 11 years, thinking that it's very, very important to listen to what somebody else has to say and then to rationally make a decision. I'm wondering, if it can happen at city and regional council—and we know what type of government, we know the level and the intensity of that government, because some of us have served—why we can't be open to that here at this level of government. I believe the barriers to that are the permanent barriers that we see outside. It's the beginning and it's a major source of the problem.

I feel very, very sorry for those students yesterday. I feel more sorry for the message that it sends out about youth, because that is not the university students' message. University students want to give a message in a very, very real and positive way. That's no government's fault; that's no ruling party's fault. I believe that's a decision or a suggestion that we should be debating fully here for some immediate action, whether it be either carried or defeated. We should establish whether or not we want permanent barriers to this building. Thank you.

Mr Boushy: I just want to make a comment following my friend's observation. I also have the same background he does in municipal government. I recall we had a park called Jaycee Park, all fenced in and we had all kinds of problems from the neighbourhood children. They'd go in, they defy the barricades, the fences. They break bottles, they have fights. Somebody came up with an idea which we thought was pretty silly at first. They said: "Take the fences down. Make it bare so everybody could see what's happening" and we did. Believe it or not, there are no more fights in that park. Amazing. It was just a chal-

lenge. It was a challenge for the kids to go over the fence and do things. I just thought I'd mention that.

Mr Froese: I understand what you're saying. I personally think the barriers definitely have to be removed, but I think it's a little bit more than that. Us first-timers come here and maybe a lot of first-timers—everybody should clean house when the first-timers come, because what happens is we come with a totally different approach. When you get here, you buy into the system, you buy into the political rhetoric and so on and so forth. Down home and in municipalities and stuff like that, it's really not a political ideology, it's kind of working together to make things better for the community.

Here it's totally different. You've got three different perspectives right now and that in itself changes the atmosphere here. I've grappled with this whole thing since I've come here. Personally, I know there are three different ideologies, but I'd like the process to work a little bit differently in that there's a coming together to better Ontario, rather than all three of us fighting, but that's politics, I guess.

But removing the barriers—I agree with that. If we're just going to say removing the barriers is going to stop it, I don't think that's what you're saying, but I don't think that'll do it as well. Right now and in the past, it really doesn't matter which government you are, the people who are behind the protests—and we saw, according to the papers, it was supposed to be a student protest and yet there were other groups involved as well. I have a problem with that. You can't change it, but I have a problem with that.

It's the people who are behind this stuff; I really question whether they're law-abiding or not when they resort to violence. Clearly, what we read in the paper and the people who were out there, the students who were there, were shocked at what had happened from some of the other students who were there. I've got to be careful not to put—how should I say—a wide blanket over everybody who thinks that same way. That's part of what Mr O'Toole was saying and myself as well.

There's another issue with decorum that we need to address and that's the rules of the House and abiding by the rules of the House, and we're going to get into it hopefully. But there is part of it with the security and I think it needs to be said again. The members inciting those people who are here to demonstrate or to—my concern is that the members, when we sign or support demonstrators: "Yep, come on in here. Let's make the government of the day pay." How should I say? It looks bad on the government if we had out here what we had and yet the public at large does not understand that the government of the day doesn't control the security around here.

It's an all-three-party thing and it really burns me. Every government has had this problem—I've followed it—that it looks like it's the government of the day who's controlling this thing. We've discussed it here and this should get out in public that right now it's a three-party situation where we're all coming together to grapple with the security issues, so we have to deal with it. I just want to make those comments.

1510

Mr Hastings: I guess what Mr Bartolucci has stated got me to thinking about a number of things, not just the issue of security, but the whole area of operations of this assembly in terms of decorum, in terms of the standing orders.

I too, when I came here, sort of had a little bit of an idealistic outlook, I suppose, that Parliament was sort of the rule body of society, the British parliamentary system, the traditions etc. I think, to some extent, I'll take my share of responsibility personally for some of the lack of decorum in the House itself because I've been one of the main hecklers on the government side at times.

My colleague from Muskoka, Mr Grimmer, and I used to have a bit of a joke over this when his three-year-old or five-year-old son said once, "What are those people acting like that for, daddy?" I used to kid my colleague and I remembered his comments about that particular child's outlook as to how we as adults conduct ourselves.

What I tried to do, but I think it was pretty bad in the failing of carrying it out, is not to heckle while there are school children in the public corridors upstairs and I don't think we've succeeded very well in that. I'd be the first to criticize myself at that, although I think we make a more conscious effort. I looked at the tapes, the heckling I've done is probably later in the day when we're all tired. I think we all do it because there's a certain lack which leads me to another observation.

The general quality of the debate in this assembly, in my estimation, can't hold a candle, generally speaking, to the type of debate and ideas you'll get at a regional or local government level. There's just no comparison and that includes townships, county councils, city councils. You know, there are exceptions every time to every generalization.

Look around at your colleagues and how many of us, when we ask a question or read a statement in the House, we basically can't do it without alluding to the actual words on the page. If you'd had a videotape back 30 or 40 years ago when Bob Nixon's father was Premier, I guess, during the Second World War, or George Drew, the first Conservative Premier, I'd lay you a dollar to a doughnut that the general level of debate, if you could compare two videotape productions of those two eras, then and today, I'm pretty sure you'd see some major and enormous differences in the way in which people can debate without having to always read everything.

You can see it even in the House of Commons in Ottawa, which is supposedly the senior level of government in terms of being able to do that. I think M. Morin would probably agree on that statement because he's got a lot more experience having come from that level in terms of public service, in terms of how you compare those things, which brings me back to the idea that I think this committee needs to take a comprehensive examination of its standing orders to see if we can be a little more creative in how they could lead to better decorum in individual behaviour and collectively. You're never going to remove or abolish heckling completely—

The Chair: Do you want to move that today?

Mr Hastings: —but I think if you look at some of the US state legislatures or maybe some of the other parlia-

mentary systems, there is a penalty when you get to a certain level of lack of decorum on a specific and responsible individual basis. I'm not sure. It's something that needs to be examined in terms of the standing orders.

I think also, Mr Chairman, if you want to open up this building, I would allude back to whether we ought to be looking at encouraging model parliaments using the chamber. Maybe the U of T has a model parliament, or Western. I don't know if every university, but I think probably at least 50% of them have, and whether we ought to be looking at our standing orders in allowing them at specific times of the year like the Christmas break to use this place, like the House of Commons in Ottawa and Queen's University. I think that needs to be explored if you want to have a way of opening it up.

I'm not so sure I agree with my colleague opposite completely that the removal of the barriers will automatically send out the right message that this place is open to everybody, because I was in education, too, and it seems to me to some extent there is an attitude in public education or among some small minority of young people, an attitude that you are not very cool if you have any respect towards private property. Like there seems to be a mindset that says you can destroy private property or public property because it is meaningless, you can't attach a human right to it, and I think the statement by the young lady, whoever it was yesterday who decided to add a little decorative art to those two plaques that are near the interparliamentary entrance into Ms Leonard's office is a good example of the cost. So I think maybe we ought to be looking at some specific and positive ways of trying to create a better House, a more positive House. I'm not sure we'll always be successful, but we need to make an effort, and that's something this committee could play a valuable role in, with the assistance and guidance of the Speaker, I would assume, Mr Chairman.

The Chair: Mr O'Toole, did you have any concluding comment, since you initiated the discussion?

Mr O'Toole: Yes. I appreciate the wide-ranging debate. It's too bad it wasn't about the decorum issue specifically—more about barriers.

But I go back to the point, and I think we're all trying to get to the same point. I concur with Mr Bartolucci with respect to the barriers. I really think that they represent an obstacle, a symbol. They are in themselves provoking. But I'm going to keep on track to wrap up.

I recognize first the issue of time and that there's an absolute requirement for this committee to be seen as being proactive and responsible dealing with the incident of yesterday and of recent times, so I think we have a serious responsibility that I do not want to deflect from.

I think also, with the permission of the Chair, perhaps we should consider treating them a little bit separately, but that is not to back away from it. I will not acquiesce that the resolution that we've made is going to be just dispensed with.

I want to go back on one small point. I think we're only just beginning to see the Alvin Toffler image of the third wave of media. Technically it's here, and that's what causes people's demonstrations. It probably started in 1970 with the Kent State event when students just, through media and hype, got out of control and there

were students killed. It, from that time, has progressed and today students aren't noticed unless they're on the front page or the 6 o'clock news, and to do that, there's always a group that is beyond the realm of normal politics.

I agree with your statements. I work with students continuously and recognize that students, both externally here—there are two or three who ruin it for everyone else. In fact, this morning on the news, they denounced the actions of the students, but there it goes to the comment made by my friend Mr Hastings who said that the students that come into the chamber—I'm embarrassed technically. Most of them leave wondering what the hell is going on in here. Like theoretically, they come in and we're doing our theatrical thing, the orchestrated period, which is what it is, a very theatrical kind of thing that's going on, playing to the media, members doing things that afterwards they kind of dismiss as trivial or it was just theatre, it was a piece of drama, and I sense that's going on. That's the television, that's the media thing, and that's what the decorum issue has to agree.

1520

If a member is inflaming action, I want the camera to move back and see what's going on. We're all accountable for that action. I don't want the camera to go blank. I want them to turn it on and see the people inciting or taking part in an unusual escalation of a demonstration. Do you understand? Like, some members sit back and we get accused, or you—Gilles, you have the most decorum of almost anyone. You sit there and do your duty and speak with dignity and all—I'm not trying to be artificial—and many members do, and we're all being tarred with the same political paint, a bunch of wackos.

Mr Stewart: Jackasses is a good word for it.

Mr O'Toole: Mr Stewart has said "jackasses." Another friend of mine, Mr Fox, is having a donkey barbecue, jackass, whatever. I'm going to wrap up here, through the Chair, but he's not listening.

The Chair: He is.

Mr O'Toole: He is listening. The point I'm trying to wrap up is that the two items are inextricably linked.

Interjection: No.

Mr O'Toole: They are, because the ultimate objective is for them to get into the media event, to get through the doors and up into the chamber. That's the hallowed place of decision-making, that's the action and that's our power. Our power is to clip on to the 6 o'clock news or to the news bite afterwards, or to pull an outrageous event in the House and the press is right there scrumming afterwards, saying, "Way to go, Peter X, or Malcolm X," whatever. "Way to go for pulling that fiasco inside the House." Do you understand what I'm saying? So it's linked to this media event, and the rules must address that responsibility of members in provoking an unsecured situation. I'm not certain how that should happen but I'm certain it should happen, and I don't think it can be separated.

I have one last point here I just made to myself. The members' ability to vote should be quite simple. You can say, yes, no, or I'm not interested. That will solve a lot of the problems for the moment. It will create others, I'm sure, which I in this chess game of time haven't figured

out, but they will, for every change creates an opportunity for somebody to dissent. But it is a chess game and ultimately, whether members agree or not—I wouldn't like to be imprudent in the decision-making process, but I will say this: The government of the day is responsible, ultimately, whether it's us or whether it's you or whoever it is. At the moment we are the government. People generally have some reluctance to endorse everything we're doing. The majority of it they do, I think, but at the one hand, the demonstration thing of a few dissenting are getting all the attention and all the media, in my view.

Let's widen the range. Let's see it on television. Let's see just how much debate really is happening, how much real interest is happening. Outside, I think they should have permits etc and have the right to dissent in their own fashion, without violence. I've gone on enough and appreciate you listening to me ad nauseam.

The Chair: Thank you very much, Mr O'Toole, for your extensive contribution to this issue today. I have been informed that Mr Bartolucci wishes to raise an issue at this time, before we conclude the meeting.

Mr Bartolucci: Mr Chair, I'd like to for a second just say how much I concur with Mr Hastings's comments. I believe it is imperative, and this is why maybe we will want to reassign what the gallery looks like, so that the children get a high-profile place. I believe we send out a very, very wrong message when children view what some groups have seen. Again I go back to my roots because they are my roots. As a teacher I can't condone that, clearly.

So, I guess I too am very cognizant of the gallery. I think we're wrong for doing that. Our actions should be appropriate to everyone, but clearly maybe there has to be a whole new mindset. But I do concur with Mr Hastings's comment by and large and I thank him for it.

I have a motion here, duly moved and seconded:

Whereas the committee believes that the permanent barriers erected at the front of the building are inappropriate, be it resolved that the committee recommends to the Speaker that these be removed as part of the recommendations to be made to the Speaker regarding a new initiative regarding safety in and out of the House.

The Chair: Thank you, Mr Bartolucci. I was just going to suggest in response, given the fact that the committee has not yet concluded its discussions, would you want to defer the full discussion of that motion at this time until next week?

Mr Bartolucci: Certainly, Mr Chair. If you feel, as the Chair, that this would be a motion better deferred, I would concur.

Mr Pouliot: Could I speak to the motion?

The Chair: No. We just decided that we're going to defer the discussion.

Do any other members of the committee have any issues they would like to raise at this time?

Mr Hastings: A comment I'd like to raise regarding the decorum issue Mr O'Toole has focused on more than some of us—the question or query about the impact of television on us as legislators. I'm wondering whether this committee ought to look at—and I only pose it as a possibility rather than just automatically rejecting it—how

would we behave if the TV cameras were turned off for a week, or for two days, say? Not on the budget debate or vital items. I'm just wondering what would happen.

Mr Miclash: My viewers would go nuts.

Mr Hastings: I'm just wondering if it would change the dynamics slightly.

The Chair: Thank you very much. Mr Grimmett, do you have another issue you'd like to raise at this time?

Mr Grimmett: Before we leave today, if we could perhaps get an idea of how we're going to deal with the whole program next week. There were a number of things that I sent you a memo about that I thought—this was prior to the group going away—perhaps we should be focusing on. I just say this so that perhaps we could have a small discussion about how we deal with next week.

I thought we would be examining the role of the Speaker, the Sergeant at Arms, the OPP and the OGPS, determine not only what the chain of command is supposed to be, but also what it in fact is. We've heard enough to know that perhaps they're not the same.

I think it's important that we provide the OPP with an opportunity to speak to the committee further and generally discuss possible models of security delivery.

I take it that we're probably going to be reviewing an enforced use of identification by all members and all staff employees, whether members are recorded, and whether spouses will get special identifiers; reducing the number of public and employee-member entrances to better staff the main entrances and permit closer inspection of visitors; ensure that all security and police staff get what I call "Dale Carnegie" lessons, and ensure that enforcement is the same at all entrances; improve communication with employees to ensure that all inhabitants of the precinct get input on security reforms. I've adopted on here also Mr Bartolucci's point, "Ask the Speaker to consider removing the barriers which have been, at best, ineffective."

I just wonder if that's the general drift of how we're going to deal with next week, or whether there are some other things in mind.

The Chair: Yes. By way of answer, I'd like to give you what I understand our schedule to be next week. We will have the press gallery in next Monday at 1 o'clock when the committee resumes its discussions. We still have Mrs Marland. We hope to have her presentation that afternoon as well. I believe the clerk is trying to set up a couple of other people who may, in fact, come in to represent the public interest.

We're about to extend an invitation to Thomas O'Grady, who is the head of the OPP, to get hopefully his viewpoint on Tuesday.

Wednesday, we have the Speaker and the Clerk scheduled to come back in to give the committee further suggestions and advice after they've had an opportunity to conclude what happened yesterday and what they think should be done.

Thursday, we have to decide what we're going to do as a committee. We have several options I suppose, but hopefully concluding these discussions in a constructive way, putting forward the ideas of the committee.

Mr Miclash: So on Thursday you're suggesting that we finalize the report.

The Chair: I'm suggesting that we've been authorized by the House leaders to have three weeks of discussions, and Thursday we're done in that time frame.

Mr Miclash: So where is it here that we get the draft report and the actual report that we're going to finalize and submit?

The Chair: I guess it's not determined what we're going to do on Thursday. That I would see as an option. We could work towards a report. We could work towards a motion that we provide advice to the Speaker that in the opinion of the committee certain things should happen. That's still to be decided by the committee.

1530

Mr Miclash: Somewhere here I'm missing something. Are we not to come up with a draft report and then a final report, and present the final report after Thursday? Is that not the actual routine that we're going towards?

The Chair: Would you like to speak to that, Lisa?

Clerk of the Committee: We discussed it for a couple of moments in the subcommittee. We were asked to advise the Speaker on security, so this may take a different form than normal reports that are presented to the House. In terms of our advice to the Speaker, that can take any form the committee chooses. That could be a report, that could be verbal advice to the Speaker, that could be a motion to the Speaker. It's totally up to the committee.

We're authorized to sit three weeks during this recess. We're not forced to be finished by Thursday. If the committee decides on Thursday, for example, they all agree that we just do a motion to the Speaker and we agree on a motion, our work may indeed be finished. If we decide that no, it's going to be something more extensive, there would be a couple of options: We could ask for additional sitting time from the three House leaders or we could continue in our normal time when the House comes back. We're not forced to finish this, although our allotment of sitting time ends Thursday.

Mr Morin: One suggestion I made when Mr Hastings replaced you, Mr Chairman, was that, instead of submitting a final report, we submit an interim report. Let me assure you again that some of your colleagues will totally object to the recommendations we make. I know from our side there are people who will object. Perhaps also from Gilles's side people will object.

This is a very serious matter. You can expect other demonstrations. We know on February 22 there is a threat of a strike. You can expect demonstrations here. There are all kinds of bodies, all kinds of organizations that will be confronting Queen's Park. We can expect that. I think the most serious matter at the moment is security.

I don't reject what you're saying. We're sitting the whole year, and on procedures I agree with you. Procedures evolve. It changes constantly. It changes with the society, like security changes with the society, and because the issues that you raise, Mr O'Toole, are valid, let's look at it, because it's your right to voice your opinion on your concern.

I had the same concern when I came in 1985. It looked like a real circus. It really did. I was there when television was brought in. I opposed television. I opposed it, because the attitude of the members changed completely.

Completely. They were in front of a camera. But when you ask about giving a total overview of the House, you'd be embarrassed sometimes by seeing some of your own colleagues falling asleep or chewing gum or eating peanuts or doing all kinds of other things they shouldn't do. Look at the report that was submitted on television.

But to come back to the interim report, give a chance to the members to give you feedback. Discuss it with them, because it affects them all, so that we can come back and come out with a very strong report. We'll have the advice of the OPP, we'll have the advice of the Speaker, we'll have the advice of all kinds of people who are concerned. We present what we heard, we make our own recommendations: "This is the package we suggest. Tell us your feelings."

Let's not rush into it, because it's a serious matter. It affects us all. I think the point that you raise, Mr O'Toole, that we can discuss openly here and without heckling—I only wish people would behave the same way in the House, let me assure you, and I don't understand why people don't. One comes to the question of discipline.

Mr Pouliot: Well, let me tell you—oh.

Mr Morin: Just a minute, please, Gilles. One comes to the question of discipline. You know, we have to police ourselves too. I think it's the responsibility of the whip. I know I had some colleagues beside me at one point who were heckling. I told them: "Give a chance to the individual to talk. Give him a chance to voice his opinion. That is his right." We have to self-police ourselves too. We have to set an example. I think, as an old member, Gilles, others, Frank, have to set an example. Show the others how they should conduct themselves, individually and without denying the right of voicing their opinion.

Gilles said it so nicely a minute ago: Some people have a way with words. They can tell you in the simplest way but you understand their message very quickly. It's like an artist with a paintbrush. You know exactly what he means, what he draws. Some people have the talent to say that succinctly, without insulting. They'll tell you, excuse the expression, to go to hell and you say, "Yes, I will," because they said it in a nice way. Then there are others who come at it in a violent way, and of course you react. That is human reaction. I think there is discipline not only in the procedures—we should review some of the procedures, but we should review also the way we conduct ourselves.

Let me give you an invitation. As Deputy Speakers, we have the responsibility of conducting mock debates with the young pages. Just come and take a look. When they debate, it is a spitting image of what happens in the House. I let them debate and I say: "Stop. This is what you see in the House but this is not the way you'll conduct yourselves with me. You will debate properly." What do children do? They imitate. They imitate some of the good members, they imitate some of the bad members, and they do it so well. Kids are mimics. Kids are just like parrots.

So let's look at ourselves. Let's ask for support for our members, from our colleagues. Then let's give the proper advice to the Speaker, because I know he needs our help

and it is our responsibility also to protect him or her. When you talk about inciting people, demonstrating, it is in the book, it is in the procedures: You should not incite violence; you should not incite the ire of your colleagues. It's there. But it's up to us, it's up to the House leaders, it's up to the whips to control their teams, as you do in a football game. The coach is there. You say, "Don't go too far." Let's not rush into it.

Let's come back on the question of procedures and let's discuss it intelligently, objectively and without getting angry, without getting upset, because we won't achieve anything. Don't forget, Mr Chairman, you're here on a temporary basis, I'm here on a temporary basis. I'm there at the whim of my electors. I always recall the story of the individual who was elected in 1971, 1975, 1980. In 1985 he said, "With the full support of my constituents, I resign." Don't take it for granted. You're there today; tomorrow it's going to be our turn or their turn. But at the same time we have to set an example to the rest of the public that says we're dealing with serious matters.

I don't want to make a sermon; it's not a speech, but it's just experience that you gather as you're here. What's so fun to be here, what's so exciting, there's always a surprise. It's vibrant. You've got to accept it that way.

The Chair: I've got four or five more members who have indicated to me they're interested in speaking to this. Of course, the point that Mr Miclash made that we haven't determined exactly how we're going to proceed, recognizing that, do members still wish to voice some—

Mr Froese: I'd like to speak to that.

The Chair: First I have Mr Stewart.

Mr Stewart: Yes, just a couple of things. I appreciate that the group has been away, but I asked on Monday if there was a possibility of getting a layout of the number of doors in this building. Is that a possibility? Could we get that either tomorrow or Monday? If we're going to make an interim proposal, could we get that? I know we have a floor plan of the Whitney Block. I have difficulty because of the quality of photocopy finding out where the doors are, if there was a possibility of that.

Just one comment to Mr Morin. I certainly believe that yes, we have to set by example, and I believe that, Gilles, very much. The unfortunate part of setting by example is it does not seem to have worked very well in the past. Yes, we have to be responsible, but I do think we have to have some rules. When I hear people being warned five and six and seven times to be quiet and to show a little decorum, I have a little difficulty with that.

We have to have some rules that are flexible, but we'll never stop this type of conduct unless we have some rules and we stick to them, and if people do not like those rules, then please leave the House until you can abide by them. We're talking about government here; we're talking about trying to get this province going and keep it going. We act—and I will include myself in that, because I sit in that House—like a bunch of children, and the people of this province are getting badly short-changed. That's why I go back to saying we should be looking at the total picture. As I say, it's great to set by example, but we have to do it with some rules as well.

1540

The Chair: Mr Grimmett's next. Did you wish to answer?

Mr Grimmett: I just want to deal with the practical issue of how we get this draft report put together. I'm not sticking anything in stone, but perhaps on Tuesday, if Mr O'Grady is the only speaker or guest, we could put our heads together and try to come up with some kind of interim consensus, direct the staff to prepare an interim report, and then we could look at that on Thursday and make some changes to it on Thursday.

The Chair: In light of what the Speaker and the Clerk have introduced.

Mr Grimmett: At least at the end of Thursday we'll have the makings of an interim report that we can take back to our parties. Is that the idea?

The Chair: I appreciate that constructive suggestion. Is that satisfactory to all members of the committee? Thank you very much, Mr Grimmett. We'll try to accommodate that request. I have Mr Bartolucci next.

Mr Bartolucci: Let me support the comments Mr Morin was making. I want something better than we've had in the past and what we have presently. I would suggest that no one should be shortchanged on the decorum issue or the safety issue. If it's going to be a draft we're going to submit first, that's fine. If it's going to be two drafts, that's fine. If it's going to be three drafts, that's fine. But the final submission has to be well thought out, clearly communicated, with openings for opportunities for others to input.

If that means this has to go on in regular committee, that's fine. We should not be in a rush to come up with a better process and to come up with something that's better. I would suggest the draft idea is an excellent idea. One, two, three drafts, it makes no difference. We have to make recommendations based on input and also based on reality of execution as well as, I guess, ideology. I would suggest that we be in no rush to make the report, to clearly debate all the issues fully, until this committee, individually and collectively, is very, very satisfied that all issues have been fully debated.

Mr Froese: I don't disagree with that at all, and all the comments that have been made. I'm not suggesting here we put a time line on it, but there has to be a time line somewhere, because we could go on forever.

This issue has been discussed for years and years and years and years, and unless we say to ourselves, "By such-and-such a date, we've got to come up with a consensus somewhere"—I'm not saying we'll do that today. I'm saying there's got to be a cutoff period where we say, "Look, we're going to hash this thing to death."

We can meet for three weeks here and still not come to any conclusion. I'm glad the suggestion from Mr Grimmett has come about, because at least there are some time lines. We must put a time line on it somewhere down the road. We can't deal with this forever.

Mr Pouliot: This book here talks about security. The agenda reflects the issue that is to be debated at present by this committee. We bring in some supplementaries—decorum, that children and others are watching on television, the right or not to be informed—and we tie in, I think by convenience, what goes out there.

In the short time I've been here, I've had a chance to go, because of circumstances, from being the third party in 1985, then the opposition, the government, and back to being the third party. Then we talked about the good tradition. Well, let me bring you to the House of Commons, for some to motherland, the British House of Commons. Oh yes, there is a fine example of decorum and good manners. Go to the House of Parliament in Taiwan for those, go to Singapore, but don't forget on the way back to stop again in Europe, because it needs visiting twice, and go to la Chambre nationale in France, go to Italy. Then when you come back here, start visiting the provinces. You should have done that first.

Every time there is a new Speaker, bar none, we are reminded by way of letters that we need more decorum in the House and "I will enforce good manners." Everyone who is running for the position—because it's an elected office, it helps to be of the same political affiliation, of course, but that's another story. Since they are elected by the assembly at large they always spin the same thing, "I'm going to have more decorum and good manners and no interruption." Our House leaders tell us that. The party bosses, if you wish, our party leaders like to have relatively good order, unless they are the ones who are interrupting. I guess that's different. There's a pecking order here.

Everybody gets treated the same. Have you noticed when I ask a question as a backbencher that the Speaker seems to allow Mr Rae or Mrs McLeod more time, even though they're supplementary to my lead? But everybody gets treated the same, other subject matters. The rules are arranged for the House leaders. You push, you do this, you omnibus this, you get criticized, it depends where you're at. You can have all the rules you wish. There's always another rabbit in the hat. The trick is you cannot

throw everybody out. It sounds good. It's the second time and you're a big name and you throw people out.

Mr Stewart: Interesting topic.

Mr Pouliot: No, no, one second. I'm sorry, but Parliament does not work like that. For every letter that you get about me heckling, if you ever get one, I will show you five I got about—oh, I'll stop it here—Turnbull.

Mr Stewart: Eddie Sargent.

Mr Pouliot: Well, Eddie Sargent, 25 years, never learned the rules, Stockwell etc, those people.

Mr Miclash: Wilson.

Mr Pouliot: Wilson etc. I know you're not imputing motives on anybody else.

The thing is, in concluding, security is what you're here to debate. If you want to debate about decorum and then throw in good manners and all the good deeds out there, talk to the Speaker, talk to your House leader, tell them to use their influence on the members of their respective caucuses. Charity begins at home. I know I for one, who seldom heckle unless I'm provoked, will start really looking inside tonight as to which way I can better my performance by being quieter. But that's for tomorrow, Mr Arnott, and I thank you.

The Chair: Thank you very much, Mr Pouliot.

Just to remind committee members that we will resume again on Monday at 1 o'clock when we'll have the representatives from the press gallery here. I also want to remind members of the committee—they may have already had a chance to look at this—but we've acknowledged receipt of a letter from the Premier and would ask all committee members to give it all due consideration in the context of our discussions.

The committee adjourned at 1549.

CONTENTS

Thursday 8 February 1996

Security of the legislative precinct	M-63
Interparliamentary and public relations	M-69
Karyn Leonard, director	

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

*Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Fox, Gary (Prince Edward-Lennox-South Hastings / Prince Edward-Lennox-Hastings Sud PC) for Mr Johnson
Pouliot, Gilles (Lake Nipigon / Lac-Nipigon ND) for Mr Silipo

Also taking part / Autres participants et participantes:

Marland, Margaret (Mississauga South / -Sud PC)

Clerk / Greffière: Freedman, Lisa

Staff / Personnel:

Sibenik, Peter, procedural research clerk, Office of the Clerk

A20N
XC20
-L20



M-8 to M-11

M-8 à M-11

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)



Journal des débats (Hansard)

Monday 12 February 1996
Tuesday 13 February 1996
Wednesday 14 February 1996
Thursday 15 February 1996

Lundi 12 février 1996
Mardi 13 février 1996
Mercredi 14 février 1996
Jeudi 15 février 1996

**Standing committee on
the Legislative Assembly**

**Comité permanent de
l'Assemblée législative**

Security of the legislative precinct
Decorum in chamber

Sécurité de l'enceinte parlementaire
Décorum en Chambre

Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Monday 12 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Lundi 12 février 1996

*The committee met at 1305 in room 228.*SECURITY OF THE LEGISLATIVE PRECINCT
ONTARIO LEGISLATIVE PRESS GALLERY

The Vice-Chair (Mr John Hastings): The first item on the agenda today is representatives from the press gallery. Mr Brennan, would you like to identify yourself for the record and give yourselves some free advertising, I guess, and Mr Harder. We'll give you about a half-hour.

Mr Richard Brennan: I'm Richard Brennan, the president of the Queen's Park press gallery. I've held that position for just about five years. On my left is Jeff Harder, who is the vice-president, print, of the gallery.

Just over 20 years ago the Ontario Commission on the Legislature, chaired by Dalton Camp and including as members Douglas Fisher and Farquhar Oliver, concluded its section on the Queen's Park press gallery by noting:

"Obviously, the membership is not only keenly conscious of its responsibilities but sensitive to its rights and prerogatives. Furthermore, the members have a discernible affection for the legislative environment."

I'm happy to tell you that the Ontario Legislative Press Gallery holds the same views now as it did when the Camp commission reported in 1975. We are keenly conscious of our responsibilities. We are sensitive, now more than ever, to protecting our rights and prerogatives and we maintain an abiding respect and affection for the legislative environment.

Let me deal first with our responsibilities, particularly as they relate to security. As you know, and as the Camp commission reported, the legislative press gallery is a unique institution representing the entire spectrum of news media. It is worth noting that when the press gallery executive of the day made its submission to the Camp commission, it said that members of the press should have as much right to their seats in the press gallery as members of the Legislature have to their seats on the floor of the House. "On first reading, it is a startling statement," the Camp report said, "but it is also true."

With that privilege obviously goes responsibilities. The gallery has a right to accept or reject applicants for membership based on the standards set out in its constitution. The press gallery also has the right to discipline its own members, even to the extent of suspension of membership. These are considerable powers in (a) ensuring that only representatives of a bona fide news agency meeting strict criteria are granted either active or associate memberships and (b) ensuring members meet professional standards, and these are clearly understood by our membership.

Increasingly there have been requests for day passes from reporters not members of the gallery and from news agencies new to the Legislature. In addition to his considerable duties as information gatekeeper over a busy news operation, the press gallery steward, with the approval of the gallery executive, has taken on an increasing security function as first line of scrutiny for those applying for day passes. He inspects media credentials and issues applications for those wishing to present themselves to security to be issued a pass. As such, he has become an integral part of the overall security system.

In addition, I have worked closely as gallery president with Staff Sergeant Gary Skelding, who was head of the OPP detachment here when the new identification passes were in the planning stages. A new system was brought in with relatively few problems for journalists covering Queen's Park. The current level of security, with gallery members wearing identification tags, is generally considered acceptable.

The gallery's chief concern in any discussion of security is that it not impede our ability to do our job and that members understand that our role here is unique. As I have said, access to the building, to the members, to the cabinet ministers, to bureaucrats and to the offices that house our equipment is essential to the press gallery and we require this access 24 hours a day, seven days a week.

In recent months, during demonstrations reporters, photographers and camera operators have been denied access to the building or have not been allowed out. Whenever the media are denied access to a public building, the gallery considers that a very real problem. Emergencies are news and it is then more than ever that we require access to the players and our facilities.

Much it seems is being done in the name of security. One day our gallery member, even though she was wearing her identification tag, was stopped and had her purse searched. Television satellite trucks are now being prohibited from parking in front of the Legislative Building, again in the name of security. May I remind members of the Legislative Assembly that this is a public building and it is of great interest, for better or for worse, to the news media, be it print or electronic.

Often I have witnessed members of the media, people who have covered the Legislature for years, being asked to produce their identification while a tourist walks by unchallenged. There needs to be a written policy on how the Ontario Government Protective Service officers deal with the media. That should include instructions on what to ask for and where to send them to get identification to cover the Legislature if they don't already have it. As gallery president, I would be more than happy to work

with security officials to draw up those guidelines so that rules can be applied uniformly.

Much has been said recently about the level of security in Ottawa and the assembly in Quebec, if it is what Queen's Park strives for. The fact that Queen's Park has always welcomed visitors and guests with as few restrictions as possible is what makes it a grand place. Speaking as a journalist and as a person who is an admirer of this historic building, I would hate that to disappear in the name of security. Thank you.

Mr John O'Toole (Durham East): Thank you very much, Richard. I appreciate your comments and agree for the most part with what you've said. In light of security and for the right reasons, for the safety of both visitors and people working here, what would you propose in the context of today's Oklahoma-type of situation as appropriate and adequate precautions for that safety?

Mr Brennan: This is where I find it a bit difficult, Mr O'Toole, because I don't feel I'm in a position to recommend or tell this committee how to go about security. I can only speak on behalf of the gallery as to how we'd like to see things as they affect the membership of the gallery specifically.

To answer your question, we are fairly happy with the way it is now. I can't see it being stepped up on our behalf, because I don't see how it would benefit us at all in our ability to do our job, and that's what I'm more concerned about. We're certainly concerned about security of the building and certainly the safety of the people who work here, but I'm more interested, as the gallery president, in how it would affect or impede our ability to do our job.

Mr O'Toole: Without prolonging this, and it isn't a debate so much as clarification, you mentioned in your presentation that in one incident a person was stopped while another person, theoretically a visitor or tourist, walked through without being stopped. Would you like to see consistency, whatever that standard is, applied uniformly?

Mr Brennan: Absolutely, and it's not just on one occasion I've seen this. I've seen it on several occasions. We might have someone walk in who is obviously a TV cameraman—he has a huge, expensive TV camera on his shoulder and all kinds of gear—and he'll be stopped and asked what his intent is, while a busload of folks from anywhere else in the world, because they've got a Handycam, they can walk wherever they want in the building. I mean, it seems ridiculous.

Mr O'Toole: So I'd guess you'd say security should be applied sort of uniformly. Would that apply to all persons entering the building, including well-established, perhaps 19- or 20-year, veterans conforming or showing leadership and that type of disposition to show leadership by example and showing their pin or their badge? Would that be acceptable as long it was applied uniformly?

Mr Brennan: I don't like security, I guess, basically, period. It's one of those necessary evils that we have to deal with. I worked here in the late 1970s and early 1980s as a reporter and we had protests out front, that kind of thing back then. There were huge protests as well. It seems to me, for example, in the case of somebody like Mr Cooke who's been here since 1977, if a

security person doesn't know him by now, I've really got to question what they're doing in that job to begin with.

Everybody, I suppose, has to have some kind of identification. I'm sure you folks do have some form, be it a pin or whatever. You have to use common sense, I figure. Tom Walkom the other day—we were covering cabinet. You know how we wait for the ministers to show up, the story of the day or something you might want to pursue on your own, it's a time for us to have access to the members—and he didn't have his identification badge. We do forget them. You don't always wear your pins and we don't always remember our badges.

The officer wasn't going to let him in past the stairway door. He wasn't going to let him in until somebody brought it to my attention, and, you know, "He's all right." There again, they bring people in here who don't seem to be familiar with the surroundings, I find often, or the people who work here. That is a real problem for us.

Mr O'Toole: I concur. I think there are people who are recognized for their roles here, whether it's an employee or a member or press, and it comes back to there being occasions when there are new people, rotation of schedules, whatever. I guess I come back to the one thing: uniformity. If you're to apply things fairly and on balance—there'll still be exceptions, I suppose—but uniform application and courtesy from both parties in respecting those protocols. Would that be something you could live with?

Mr Brennan: Absolutely. I know my membership, although they gripe sometimes because they might have all their equipment on and coats and everything else, but for the most part it's not a big deal having to show your pass. We're not here to whine about that by any stretch of the imagination.

Mr David S. Cooke (Windsor-Riverside): I'll just pick up on a couple of things that Mr O'Toole said. Actually, I've been thinking for the last few days that this is my opportunity to get Richard Brennan. This is the first time I've had the chance to ask him questions.

I'm not really sure myself, when you ask Richard or anybody else about the appropriate levels of security, whether or not you can be using Oklahoma, Quebec City, London, Moscow or whatever as the criterion. I mean, they've all had some horrendous breaches of security. Quite frankly, if somebody wants to do in Toronto what they did in Oklahoma, all they have to do is drive a car or a truck up on University Avenue between the two buildings and they can blow away the Legislature and the building on the other side of University. I'm not sure how you can ever stop that unless you want to block off University a couple of blocks down that way and a couple of blocks down that way and have security driving up and down University.

I guess, for me, it comes down to common sense. We can do all sorts of things around here in the name of security. There has been a lot of talk about uniform application and perhaps having different coded cards or whatever for people getting in, so the tourists would have one type of card, somebody else would have some type of card. But I guess I'm still thinking to myself, we haven't heard any complaints about people who walk through the building.

The breaches of security that have taken place around here have been on two demonstrations: one in 1988 and one a couple of weeks ago with the students. Those have been the breaches of security. The other demonstrations, the demonstrators have all been kept outside. They've been rough, but the demonstrators have been kept outside.

So I want to ask you, not so much as a member of the press gallery but as two of you who work in this building, whether you've personally felt threatened by people who walk through the buildings, who are either tourists or visiting the building on business, and if not, as people who work here, do you think it's appropriate to take security measures on those people when we haven't had breaches?

Mr Brennan: I've never felt physically threatened while I've been here.

Mr Cooke: Other than by members. By members and the gallery, it's okay.

Mr Brennan: Well, at some of our meetings I've felt threatened, but other than that—I've worked here for six and a half years now, and I've never felt physically threatened by anyone, albeit outside or inside. Again, security for journalists is always a big problem because security for us is a roadblock; albeit we realize there has to be security, it can be a real problem for us. When I can't get out of the building to do my job, that's a problem for me; if I can't get back in to file my story, that's a real problem.

1320

I think it has the potential of being used as an umbrella for everything that ever could possibly be wrong or something that is not particularly liked, like the satellite trucks. I think it's a way of life and I think this Legislature better get used to it. This place generates news and it will for a long time, and satellite trucks are now a fact of life and they're going to have to deal with them. But the point is that security has been used, as an example, to stop satellite trucks from parking in the driveway, and you start to pursue it a little bit, what's security—

Mr Cooke: That's why I really have concerns when somebody says, "Do you support uniform application of rules?" Of course, they should all be applied fairly, but if uniform application of rules means that if a member of either the gallery or the Legislature forgets their identification cards one day and it's uniformly applied, then you're out for the day. I don't think that's fair. If the security officer knows that you're Richard Brennan and you forgot your security pass for the day, we're not working in a place where there are 20,000 people working and we don't know one another. We do get to know one another. So uniform application would mean that if you forgot your security pass, you're out for the day, you cannot come into Queen's Park for that day unless you go home and pick up your security pass.

Mr Brennan: I guess this is what's always made this such an attractive place to work, that it is like its own little community and everybody does know everybody. Again, we talked about common sense. You can't apply hard and fast rules like that. If I show up some day without my pass, they're not going to let me in? Well, there's going to be a problem. The point is, we all forget things and there has to be some kind of allowance for

that, be it you get a temporary pass for the day, which is what is done now basically. If I forget my pass, I go down to get the paperwork from Tom—Tom Russell is our steward, by the way—and I go downstairs and I go to the OPP bureau and get one for the day.

Mr Cooke: Why would you have to do that? There are only a few hundred employees in this building and they know who you are. So what are we doing? We talk about government bureaucracy creating paperwork. I don't understand why you wouldn't be able to get into the building, why you'd have to go get a temporary pass to get into the building, when you've worked here six and a half years and everybody knows who you are.

Mr Brennan: Mr Cooke, it's usually when the Legislature is in session, and I should have explained that. For example, I wouldn't need a pass today. They particularly want one when you go in the Legislature, I guess for obvious reasons. But that's the only time I'd have to get a temporary one. Enough people know me around here that I wouldn't need one.

Mr Jeff Harder: There is, though, a pretty enormous inconsistency in the application of whatever rules exist today. I know much of the examples are anecdotal and, unfortunately, that's really all we have to go on at this point. But it isn't uncommon, as Richard points out, for someone from the media, even perhaps with proper credentials, to have their bags searched completely, among other things they may or may not be carrying. At the same time, you will have alleged visitors roaming the place freely, seemingly without any restrictions whatsoever. The Premier had a press conference the other day that was hijacked by a couple of those people. I've come out of my office at 6:30, 7 o'clock at night, when there's nobody left over in the southeast corner of the chamber, and run into people just walking around aimlessly, without any direction of where they are or why they're there, and I find that a little uncomfortable. So whatever the rules are, it would be at least nice to have them known, made public, posted, or something along those lines, to give us some comfort as well.

Mr Cooke: In some respects I agree, because one of the incidents that's bothered me about not being particularly consistent was, I remember when the Minister of Health made his announcement on the lab for very dangerous viruses in Etobicoke being cancelled, there were some well-respected people in the medical community who wanted to come and say that was the wrong thing to do. They weren't allowed to come to the scrum, but the Minister of Health brought the mayor of Etobicoke through the security lines and made him available to all of you in order to say that the government was the greatest thing since sliced bread. To me, that's manipulation and use of the security rules in order to manipulate all of you in the gallery, and that, to me, is wrong.

Mr Harder: If the rules were stated and were plain to everyone, we could work much more easily within those guidelines, and we'd know when and if there was a breach or if there wasn't.

Mr Frank Miclash (Kenora): Gentlemen, thank you for your comments. Something that I'm wrestling with right now is the fact that we have the permanent barriers out there. Richard, you've been around here six and a

half or seven years, you will remember the times when the podium used to be set up on the staircase coming into the main entrance. From your point of view, do you see that as being a better setup, to have the podium there, having whoever is leading the demonstration or speaking to the group speaking from that aspect out into the group and no barriers? How do you see that?

Mr Brennan: Like I said, I worked here in the late 1970s and early 1980s, and there weren't barriers then. I don't remember people making a mad dash for the door then. The barriers—and I guess I'm almost speaking on behalf of myself—when you tell a kid they can't do something, they want to do it all the more; I know mine do, anyway. You put a barrier there, and it's like that wall, you know: "We've got to get over that wall. We'll only make our statement and be heard when we get over that wall." Honest to God, I don't ever recall, in my years before, an incident where somebody tried to get in. They used to stand out front or at the podium and yell and scream away about the government of the day, and there wasn't a problem. It seems now that the big thing is to knock the barrier down and get over it and make a dash for the door. It wasn't a problem before.

Mr R. Gary Stewart (Peterborough): You were talking about 1977. Was there major TV coverage both inside and out back then?

Mr Brennan: Mr Stewart, certainly not like it is now. You've got to remember, back in those days the Tories had been in power for 37 years, or whatever it was at that point. It just didn't generate the kind of interest—and I'm being quite honest—that it does now and it has for the past six years.

Mr Stewart: But do you not think part of it is, though, with TV coverage being that much greater now and TV coverage inside the House now? Do you not think that's created some of the problems we have as well?

Mr Brennan: Well, you'd have to do a study on that. I don't believe that to be the case. I think there's more interest in the place, yes. I would agree with you there. But I don't agree or even suggest that there's more interest in doing harm to the place because of TV coverage. I just don't believe that. I'd have to look it up in my files, but when they started televising the House back in 1982 or 1983, something like that—what was it?

Interjection: It was 1987.

Mr Stewart: So that could be one of the reasons why there were less problems. That wasn't really the question that I had. How often is there a change? In the two-month period in the Legislature that the Legislature is sitting, and you're talking about some of the press gallery having difficulty getting in and out, how often during that period of time, in that two months, would there be new faces appear to get in? I guess my point is, is there a big turnover?

1330

Mr Brennan: There is a turnover about every three years, like usually a complete turnover. Yes, people come and go, but if you're talking when there's a whole group of people leave at once, you often find after a new government is elected, reporters go on and they do other things, so there's a whole turnover there.

Mr Stewart: But not on a daily or weekly basis?

Mr Brennan: Oh, no.

Mr Stewart: Would there be two or three a week that would change?

Mr Brennan: No, it wouldn't be that. It wouldn't be that in probably a year.

Mr Stewart: Okay. I guess the point I'm leading up to is that we've got open access to the whole building and we've got 12, 13 and 14 doors available here and over at the Whitney Block and so on. To solve possibly some of the problems, would your people consider having a single access to this building probably the way your own companies do?

Mr Brennan: The whole time or on a constant basis?

Mr Stewart: Period. That you would come in the west door, you'd come in the east door, and I know somebody's going to say, "Well, jeez, I've got to walk with equipment a little bit farther." But it could save us some problems, it could save you guys some problems as well. Do you think they would accept something like that?

Mr Brennan: I think there's some merit in it. If there's one entrance that we could come in and if it meant less hassles for—

Mr Stewart: That's what I'm talking about.

Mr Brennan: Yes.

Mr Stewart: Okay. The other thing is, a comment was made that we've only had two problems since 1988. One was a demonstration in 1988 and the other one was the students the other day, but yet we've had all kinds of personal threats up here. We've got 200 and some people in the computers of questionable conduct. We've had, I believe last year or the year before, 14 bomb threats. I guess my comment to you is, do you not feel that we have to perk up some security around here, but make sure that the rules are abided by and if there's set rules, they govern everybody?

Mr Brennan: Again, Mr Stewart, I believe that security is a necessary evil. Any further than that, I can't say because I'm not privy to all the information you certainly are. I just don't want to see this building, which I love dearly, become an armed fortress, a walled fortress. I don't see how that benefits anybody.

Anecdotally, I know there are bomb threats and death threats and that kind of thing. I know they've escalated, but they've always existed in one form or another. They may be more now because people are upset about this and that. People will always be upset regardless of what government's in power. I don't think that justifies a heavy hand, I really don't.

Mr Gilles E. Morin (Carleton East): I know that we are short of time, so it'll be two quick questions. The first one: You alluded to a written policy for the media. Could you be a little more elaborate on this and, if we were to establish a policy for the media, what are the main points that you'd like to see in it?

Mr Brennan: I guess it would be pretty simple. We have people coming here all the time who are journalists, but aren't members of the gallery—you know, the health reporter from the Toronto Star—and most of those people have passes because we're urged them to do so. But if they come up and they just present themselves at Queen's Park, it shouldn't require an inquisition. It should require just to walk in the door and say, "I'm with the Toronto

Star” and show a pass. They say, “Okay, go to the third floor, please” and make out the necessary paperwork and then go to the OPP and get a day pass. It should be that simple.

But now we’ve got some people forbidding them to come in. We have some people sending them to God knows where and it’s just a mess. It really is.

Mr Morin: In other words, what you’re saying is, if there was a standard procedure that applies for everyone you wouldn’t object to that?

Mr Brennan: If I had a say in it, I wouldn’t—

Mr Morin: Pardon me?

Mr Brennan: If we had a say in it, yes, very much so.

Mr Morin: Right, right. So it applies for everyone who comes here?

Mr Brennan: Anything that makes it simpler. There’s no reason for it to be an exercise in obstruction.

Mr Morin: The other question: Your criteria to accept new members in the gallery, what are they?

Mr Brennan: New members? You have to cover the Legislature either on a full-time or a part-time basis. If you’re a full-time member, you have to cover this place—just that, on a full-time basis. You do nothing but cover the Legislature and you have to work for bona fide news gathering and delivery agencies. You couldn’t work for a public relations company. For example, if you had a newsletter, you wouldn’t qualify. If you work for *Corriere Canadese*, you would qualify. You have to get a letter from your respective editor asking that you be made a full-time member or associate member and then it comes before the entire gallery and is voted on.

Mr Morin: Or to visit, for instance, a small local newspaper. They write to you?

Mr Brennan: If a newspaper reporter came from your riding, they would come to the gallery, get accreditation for the day—let’s say the House is sitting, for example—and we would look after them, but that’s just done right there. That’s more a security thing. We’re just kind of a conduit. We know what to ask for and how to deal with journalists when they arrive and that’s why we’ve become part of the system. They would simply show themselves and we would look after them.

The Vice-Chair: Mr Bartolucci.

Mr Rick Bartolucci (Sudbury): You will notice that the Vice-Chair said the name perfectly correctly and I’m impressed.

Richard and Jeff, several points of insight are worth noting in the presentation, and I thank you for it. I think this committee is trying to establish a way that works, and works for everyone. I’m concerned now that we’re going to have too many rules and too many regulations.

I guess I go back to my background as a teacher. When I moved into a school where so-called rules and regulations were necessary, I ended up having too many rules and regulations and they were a way for people to abuse the system rather than to operate within it, so I learned very quickly in administration that a much better way to proceed is through establishing protocol: for students, for teachers, for parents.

Richard, a point you made that is I think essential in the process is that you feel a part of the process. Are you more in favour, then, of a protocol in which you’ve had

a say as opposed to a set of rules for you to follow? Would it work? Would a protocol work better than a list of rules and regulations?

Mr Brennan: I wouldn’t like to see anything imposed on us—in short, nothing. I would like to work with whoever on this committee or subsequent to this committee as it applies to reporters only—that’s the only thing I could speak on—and how the rules and regulations would affect us and how they would be applied. I would welcome that and be readily available for that. But I would not like to see anything imposed. Reporters are an unusual lot and they don’t like to be told what to do.

Mr Bartolucci: Last Thursday I introduced a motion to remove the permanent barriers. It was a motion on which the Chair asked for deferral because we wanted to deal with it when the time was appropriate, and I agreed with that. It was an interesting point that you made. I did this because I met with a group of students the night of the demonstration here. The students said exactly what you had said, “We don’t feel a part of the place when there’s something permanent denying us access to it.”

If the protocol allowed for freedom of movement, but the movement is guided or structured, do you feel, from your perspective as reporter, that that would work for you as well? If you understood exactly what the ground rules were and you were a part of them—this may be repetitive but it’s a little bit different—could you live with it and could you operate within it?

1340

Mr Brennan: We’re willing to operate within guidelines as set out by this committee and with our input as long as they aren’t onerous, as long as it isn’t something that we have to stand at attention and pay homage to security. We’re not into that. As Camp said in his report, we are part and parcel of this building. There has been a press gallery in an informal way in this building since the late 1800s and in a formal way since the early 1900s. I think anything that’s done we’re certainly willing to work with and participate in, but I would not like to see it as something that is imposed on us or is heavy-handed.

Mr Bartolucci: Does the press gallery or a representative meet with the Sergeant at Arms on a regular basis?

Mr Brennan: No.

Mr Tom Froese (St Catharines-Brock): Thank you very much for an excellent presentation. A lot of the stuff has been said already and I’m stroking off the answers to the questions. I’m trying to get down to the few questions that I’ll ask.

From my understanding of what you said, the times the press gallery has had a problem have been very few, that they’re few and far between. There are not a whole lot of complaints from the press gallery as far as getting access to the building, or are there? I assume members of the press gallery would have questioned, “Why can’t I get in the building at this particular time?” What reasons have you been given? I think Mr Stewart asked about the turnover of staff in the press gallery, and one of the problems you’re facing is the turnover in security staff. It’s probably impossible for people like yourselves who have been here for a long time, but some people from the press gallery who haven’t been here for a long time—I have

been here seven or eight months and security doesn't know who I am. So are we seeing that kind of problem?

Mr Brennan: I get most of my complaints from people from the outside who come here for a particular purpose—the example I use is the health reporter from some newspaper who can't get in—or if they do get in, it's just an unbelievable hassle. That's where I get most of my complaints from, rather than from my members, who for the most part carry their passes and are known and they know they have to do this to get in. We don't have a lot of complaints about the way it is now.

Mr Froese: It was mentioned before what the criteria are for people getting in or visiting from a local newspaper or whatever. Is that information forwarded on to the Sergeant at Arms at all or does it just come through you? You mentioned about it being voted on as the press gallery—I guess I'm unclear. Are those individuals who come in for the day or is it those individuals who are coming in for a specific period of time?

Mr Brennan: If you're just coming in for the day from a newspaper, a radio station, a television station or whatever and you just want to observe for the day—this particularly applies when the House is sitting—you come up and we check out your credentials to make sure you're a bona fide member of the news media. We'll give you the necessary paperwork, you fill it out in front of Mr Russell Stewart, you take that down to the OPP station and they issue the pass. They take your name and number again and all that.

If it's full-time members who are coming, they make application; we vote on it. That's what we vote on at the gallery. The other is just a kind of paperwork shuffle, basically; that's all that is. Then, if you're voted in, you are issued a permanent pass like the pass I have, and that goes on record downstairs.

Mr Froese: Just to sum it up, basically you want it as free and open as possible. You don't want to comment on the security provisions we need to look at other than your area because you're not informed and it hasn't been a hassle up until now. So as far as you're concerned, if it stayed the way it is right now, it's not a big deal.

Mr Brennan: It is a big deal in some ways. If there's a protest out front—like Mr Stewart says, there are a lot of doors in this place—and all of a sudden all the doors are sealed and I can't get out or I can't back in, that's ludicrous.

Mr Froese: That's assuming that things will change drastically. But the way it is now it's not a problem.

Mr Brennan: It is a problem. It's happened to our members several times. With demonstrations, we can't get in the building or out of the building—in or out. That is a problem for us, absolutely.

Mr Froese: But primarily when it's a demonstration, that's when you found it the most difficult time.

Mr Brennan: Well, news is happening. That is a very difficult time because we're very much interested in what's happening outside, if there's of a demonstration or whatever. I might be out already covering it, and I go to get back in, and even though I have a pass and I go like that and I show the guard, he won't let me back in.

Mr Froese: Okay, so that has been a problem.

Mr Brennan: That has been a problem. That's happened on two occasions for sure.

Mr Harder: At least.

Mr Brennan: At least two occasions.

Mr Harder: You mentioned questions; you asked, can you get answers from people? You can't get answers from people. You ask the Sergeant at Arms and he says, "Talk to the Speaker." The Speaker says, "Talk to the Sergeant at Arms." Then you end up at the staff sergeant level. There's an institutional apprehension to discuss and explain why some of these measures are used.

The Vice-Chair: Thank you very much, Mr Brennan and Mr Harder. Any final comments you need to make?

Mr Brennan: That's fine. Thank you very much. I really appreciate the opportunity.

The Vice-Chair: Thank you for taking the time to come and present your views to us.

ONTARIO MOTOR COACH ASSOCIATION

The Vice-Chair: Our next deputant up is Mr Wayne Asquith, representing the Ontario Motor Coach Association. Do you want to state your name for the record and your position or office, Mr Asquith, please.

Mr Wayne Asquith: My name is Wayne Asquith. I am president of New Dimensions in Tours, a registered Ontario tour operator. I'm also chairman of the travel and tour committee for the Ontario Motor Coach Association. I'm here to represent them.

Just to give you a bit of background on the Ontario Motor Coach Association, it represents 90 tour operators in Ontario. Some are from the rest of Canada and there are some from the northern US. We also represent 75 motor coach tour operators. That represents about 90% of the provincial motor coach tour operators.

We're here to put our oar in the water and to say first of all that we experience very few problems visiting this building and Queen's Park in general. We are concerned, however, with what seems to be a growing trend towards limiting public access, reducing the number of opportunities for tours of public buildings, the closing of some public buildings. That impacts, I think, a great deal on tourism, and really that's what the Ontario Motor Coach Association is all about. We're here to satisfy the needs of tourists. We take tourism in the broadest sense of the word. If you've come from Powassan, Ontario, to visit Toronto, you are a tourist to Toronto as well as if you come from the US or from foreign countries.

The legislative buildings and Queen's Park are a great source of pride to those of us who live in Ontario. We're anxious to show off Queen's Park and the Legislature and the way Parliament works in the province of Ontario. It's a great attraction to many foreign visitors who come to Queen's Park. You have to remember that visitors to Canada do not experience this same kind of freedom in the countries they come from. I've travelled abroad and been asked to open up my suitcase at the point of a machine-gun. That's a little intimidating and it's not the kind of thing we want to come even close to here. It also doesn't endear you to going back to that country, that's for sure.

Most visitors to Queen's Park, as far as the Ontario Motor Coach Association is concerned, are part of a pre-formed group. They would come with appointments. The exception to that would be people who are on a Gray Line tour who pull up in front of the Parliament buildings and want an individual tour or want to be part of a public tour. The tour of Parliament and the Legislature is always part of an Ontario student program visiting Ontario, and it is actually a necessary part of the Ontario Young Travellers program for northern Ontario students visiting the southern part of the province.

1350

It provides excellent promotion and advertising for the province of Ontario. As I mentioned, pre-formed groups will come with a reservation and want a guided tour, and that's done as many as three or four months in advance and probably as short as two or three days, based on availability. Individual visitors would join public tours, and groups also come to tour the grounds or to begin a walking tour of this area of Toronto from the grounds of Parliament.

What we would like to do is encourage the MPPs to not limit access to the grounds or the buildings. Access to this facility has a very positive effect on tourism in the broadest sense, and that's visitors from Ontario, Canada and other countries. It goes to the image of Ontario politics and politicians, I think, and the openness of that to the Canadian and Ontario public.

Ontario visitors and particularly Ontario students, need access to the Ontario parliamentary process. What better way to teach students about democracy and the parliamentary process than to bring them to a facility like this and let them see how it actually works. We would like to encourage the members to continue with their access to the grounds and to the buildings. Parking, as you know, in Toronto is somewhat of a problem, but here at Queen's Park parking has been fairly well organized and coaches are allowed to bide their time where there's a tour going on.

One of the things that the tour business does and motor coach tour operators do is schedule things on a very tight schedule. So it's nice to be in and out. You know when we're coming. You know when we're going to be here. Cancellations are generally made way in advance, and we'd like to move in, move out in the allotted time and be about our business. I encourage you to allow us to continue to operate that way.

Mr Miclash: Wayne, thank you for your comments. When we were in Quebec and Ottawa we looked at a couple of the systems where the visitors would be asked to go to a specific door, come through that door and be checked in. You mentioned your notification of attendance which they indicate, especially in Quebec, was very helpful to them and allowed for quick passage through their system.

Let me explain to you what their system was. You would come in the visitor door and you would come through a first set of doors to receptionists and at that point, from the receptionists you would go on through a metal detector and your bags would be checked much the same as at the airport. This would be with two armed police officers there. They were quite noticeably armed

in terms of side-arms and open to the public. Then from there, you would go to another two or three receptionists who would give you a badge to wear as you toured around and then on the way out you'd go out a separate exit and hand in your badge. You'd be checked through the system.

How do you feel about that system, compared to the openness that we have here at Queen's Park right now? Do you think visitors you bring to this area would have some problems with that kind of entrance?

Mr Asquith: That's common in Quebec and the province of Quebec also requires that tour operators send in advance a list of the people who'll be touring, their names and ages. I'm not sure what the age has to do with anything. Those are things that we're not afraid of and not upset by. If it slows the process up, if you went in a lineup waiting to be processed for a half an hour, that's a catastrophe for a scheduled tour. But if it moves, as it does in Ottawa and in Quebec, in a system that you're there, they know you're going to be there, they know how many they have to deal with and you're processed quickly, I've never had anyone complain about it and I don't see that as a major problem.

It probably doesn't present as open a picture as walking in the building and having free access, but I think we all understand those restrictions are somewhat necessary now. I don't think that's a problem.

Mr Miclash: Thank you. I appreciate those comments.

Mr Morin: In other words, you don't object to a well-established system, perhaps not as elaborate as what Mr Miclash just explained, but at least one entrance where visitors would come in, be checked and then processed as quickly as possible. You don't see any objection to that?

Mr Asquith: We see that as really advantageous. Then you don't mill around with a group of 40 12-year-old students who are anxious to get on with what they're doing and this is probably not the highlight of their four days, but it's a part of the process. We see that as an advantage. One door is easy. We do it in Ottawa; we do it at the Supreme Court. If we're sitting in on question period in Ottawa, we go through metal detectors to do that. That's not a problem. If it's run efficiently and does not delay the system, that's advantageous to groups moving in large numbers.

Mr Stewart: We're talking of two different situations. One is if you as a tour operator bringing a group here, whether it be a school or whatever, you can control that. You can control the list of names; a certain amount of onus goes on the tour operator as well as the school and the teacher. Would it be too confusing to have the same entrance used by somebody like Greyhound, whatever, that is just bringing up a group that they picked up from wherever, to have them go through on an individual basis? I might know your answer, but I want you to make a comment on that.

Mr Asquith: You mean to have the group—

Mr Stewart: You bring a busload from Sutton public school today and I bring one about the same time, but I pick them up in a number of locations. I just have Joe Smith Tours, I've got 47 people who have booked on it individually and I bring them here. The problem I see is that it's a major problem for a tour operator to do it that

way if they all have to come through on an individual basis. Could we separate them without causing any problems for the operators?

Mr Asquith: If a tour operator had made an appointment two months ago to present his group at 11 o'clock in the morning and it just so happened that Greyhound pulled up with a group it had assembled about town and was not an announced arrival, as a tour operator I'd like to think that having made that appointment two months ago stands for something and that is our pecking order.

That's the way it happens in Ottawa. Ottawa will take individuals on a group tour on a scheduled activity. So every half-hour you can get a public tour of the Parliament Buildings; if you have an appointment as a group, you would go around that group waiting. Sometimes they'll tag those individuals on to the end of your group. I have no objection to that; that's not a problem. If it's a group of adult individuals, they don't want to see as much detail or are not as interested in the questions that students ask, but sometimes they are. If we've got an appointment and we keep that appointment, we'd like to be handled on that appointed hour and not be bumped for a public group that had no appointment.

Mr Stewart: So we put the onus on the tour operator to make sure it's pre-booked, to make sure he has all the necessary information—ie, the list of names of the students etc—and then put it through.

One of the things I would say: How much onus do you think should be put on the tour operator and/or the school or whatever, to make sure that all the rules are abided by, which could solve some of the problems up here?

Mr Asquith: The terms of the way a tour operator works on a regular basis are, everywhere we go, it is with appointment. Those are made a long time in advance; rarely you have to make a shuffle at the last minute. I have no problem with a tour operator having to make an appointment, to follow the rules of lists of students or participants in the tour or whatever you deem to be necessary. Those are things that can be done way in advance and presented upon arrival.

1400

If the tour company knows the rules, there's no reason we can't abide by them, provided they're not onerous and go beyond common sense. If we had an opportunity to participate in what those rules might be and knew them well in advance, I see no problem with making appointments, attending at the appropriate time, cancelling appointments—I think those who don't do that could be subject to sanctions in the future. Rules are rules and we're quite happy to abide by them, because in the long run it makes the tour run more efficiently. If we arrive at 11 o'clock and can't do the tour until 20 after, because some other group didn't make an appointment and got bumped ahead of us, that puts my entire schedule out of whack for the rest of the day.

Mr Stewart: The reason I asked about the onus was the fact that when we talked to some of the security people up here, some of the things that they have taken out of the kids' knapsacks and bags and so on and so forth tends up to slow up the whole process, so what I'm saying is that maybe there should be more onus put on

either the teachers or the tour operator, whatever, to make sure that doesn't happen before they arrive at this door out here.

Mr Asquith: If we take a group to the Parliament Buildings in Ottawa or the Supreme Court, where we have to go through metal detectors, we advise the students before they get off the coach to leave everything behind: "Don't take your purse with you, don't take your clipboard, don't take anything you don't absolutely need, because you're going to have to leave it behind. It's going to have to be checked and it simply slows the process." I've been with groups from other countries, and one of the leaders said to me, "What should I do?" and she handed me three pair of brass knuckles. I said: "I don't know what you do with them, but you're not going to get through that detector. Leave them behind." It's not appropriate to take them into a place like that.

Mr David Christopherson (Hamilton Centre): I enjoyed your presentation. Just to sort of flip your perspective over and take it from a different vantage point, you would obviously, I would think, feel some responsibility for the people who are with you, to a certain degree, in terms of their safety. As much as we know, from visiting the House of Commons and the National Assembly, that this operation here is much more open and accessible than the others, that's only one of the factors to consider.

I'd be interested in your thoughts on how you feel about the relative safety of the people whom you bring here, whom you take responsibility for bringing into this public building, given that right now it is one of the most accessible, probably, in the nation. I think a lot of us take pride in that, but there is the issue of, if you will, innocent citizens and visitors who are in the building and how much responsibility you and we and the Speaker have for their safety. With that in mind, what's your sense right now of your comfort level for their relative safety as they walk through the building under the current rules?

Mr Asquith: I'm extremely comfortable with that and would have no reason to advise groups to the contrary. It's an open building and we don't anticipate or expect or have any vision of any problems, but we didn't when they were shooting from the Parliament building in Quebec City either. But we still don't; that doesn't deter. We see that as a one-off situation that no one can plan for and is very difficult to prevent.

Mr Christopherson: If you had your druthers, in terms of the colour coding system where everyone in the building would be expected to be identified in one way or another, at least as part of a group, or some sense of who they are, do you see that as something that you'd like to see us do, don't care or would urge us strongly not to do?

Mr Asquith: I don't see any reason why you shouldn't do that. I don't see any reason to deter you from that kind of practice. I know that from a student point of view it may even add an aura of some importance to the student as he's going through with the group, because he now has this badge. Adults I don't think have any problem with that at all. If you feel that's a good way to identify a group or to identify an individual, I see no problem with that.

The Vice-Chair: Mr Asquith, how many tourists come through this building according to your member companies, if you could give us an estimate?

Mr Asquith: I am unable to do that. I called the Ontario Motor Coach Association to get those numbers. We've been in contact with the Metropolitan Toronto Convention and Visitors Association. There are no numbers that I'm aware of that would tell us how many visitors come through this building through our membership in a year; I have no idea, I'm afraid. Probably your security people would have a better idea of that than I do.

The Vice-Chair: What do you think from your own personal perspective, if you were putting a ballpark number on it? A hundred thousand a year?

Mr Asquith: Certainly hundreds of thousands.

The Vice-Chair: I assume you must attend other conventions of your organization with other groups throughout North America or the world?

Mr Asquith: Yes.

The Vice-Chair: Have you ever had the opportunity to discuss the whole concept of security and access, or has it been an item of discussion in any seminars at your Ontario or national conventions?

Mr Asquith: I have never had an opportunity to discuss security or the planning of security. I know that on occasion we get some concerns not so much about security, but restrictions: "You can't go to that part of the building. You're not allowed to see this. These doors are closed." I think it goes to the discussion earlier about physical barriers that seem to irritate people. If there's a physical barrier, they see that. Not that they'd want to cross it if it weren't there or they want to cross it when it's there; it just has that negative impact on visiting any sort of public building.

The Vice-Chair: Any further questions, ladies and gentlemen? Any final comments, Mr Asquith?

Mr Asquith: Thank you for the opportunity to come and speak.

The Vice-Chair: We appreciate your taking the time to come and make your organization's viewpoint known to us.

MARGARET MARLAND

The Vice-Chair: Our next deputant is the esteemed MPP for Mississauga South, Margaret Marland.

Mr Miclash: "Esteemed" or "steamed"?

The Vice-Chair: Esteemed.

Mrs Margaret Marland (Mississauga South): I hope that's on Hansard.

The Vice-Chair: I'm sure they do corrections, Margaret. Welcome. By the way, before you start, Mr Bartolucci, since I corrected myself and made all these statements to myself afterwards—

Mr Bartolucci: I'm really impressed, Mr Chair.

The Vice-Chair:—I figured maybe it would be worth a bottle of good Italian wine now as a reward.

Interjection: Niagara wine.

The Vice-Chair: Margaret, proceed.

Mrs Marland: Thank you very much, Mr Chair. I'd like to thank all the members of the committee for this opportunity, because the subject of security in the

legislative precinct has long been a concern for me; it hasn't just evolved in the last seven months of the new government.

I was wondering how many times the Legislative Assembly committee or even other standing committees of the Legislature have discussed this subject or related subjects, because it's not a new concern that I have and it's not a concern that isn't shared. In my 11 years here I certainly have been aware, through many colleagues in all parties, on all sides of the House, that the complete openness and uncontrolled accessibility to the inside of this building perhaps needed some revisions. I personally would be opposed to revisions that would turn this public building into Fort Knox and I'm not looking for those kinds of changes, but I am looking, in the interests of public safety, for some controls that we don't currently have.

It's interesting that when you look at the history of what has been evolving in terms of incidents in this building, it matches pretty well what has evolved in our society generally in terms of a deteriorating lack of respect for law and public responsibility. Unfortunately, it is a sad commentary on our society but it's one that all of us, in all of our jobs here, have to be sensitive to because it's a fact of life. You only have to talk with teachers in secondary schools and in some elementary schools to know where society is going in terms of a diminished respect for law and order.

Some of the experiences that I have had personally in this building I can't speak to you about because this is on public record. I'm hesitant to publicize some of the experiences and events that I have personally been witness to because I feel very strongly that every time we publicize an incident in this building, or indeed in any other government building or Legislature across this country, that then becomes the potential forum for a copycat person, and perhaps someone who hadn't thought about how to vent their frustrations against government, whoever the government is, might then think, "Oh yes, that's something I could do."

1410

That's why I'm always appalled when somebody is killed by a modified starter pistol. The next day on the front page of the *Toronto Star*—I have seen this; that's why I mentioned that particular paper—there's the full, detailed diagram about how to convert a starter pistol to a means of killing someone, or at least causing bodily harm.

I'm only going to refer to incidents that were on the public record in terms of what I've experienced in this place in the last 11 years. Those are incidents that no one would want repeated because of the level of risk that the public here at that time was placed in.

We can go back to just last week, of course, to the incident with the university and college students from all over, the 905 area certainly. I heard they came from as far afield as Sheridan College in the west. My concern was for those students themselves. I really felt that when they're breaking down doors with 100-year-old bevelled plate glass in it that isn't safety glass, we could have had some terrible tragedies with injured eyes, at the very least, with that kind of glass last week. I'm thankful there

were not those kinds of injuries sustained by those students. But the possibility of that kind of thing happening has just simply not to occur again, and we have a responsibility. We're the people who are responsible for this building and we have that responsibility to ensure their safety.

I hope you're going to have great questions, David. You said you were.

Mr Cooke: We will have to stick to the topic, though.

Mrs Marland: I'm going to be very disappointed if you don't have great questions.

I guess there's no one—well, maybe Mr Christopher, Mr Cooke, Mr Morin and certainly Frank. I can't remember what year it was that we had this female who got on to the floor of our House. We've all heard of the incredible experience of the young man who got on the floor of the House of Commons and got to the point that he wanted, which was to lift the mace. That's stood as an example of lack of security in the House of Commons.

If anything, our breach of security was even worse. At least the man in Ottawa came through the main front door into the chamber. In our case, this woman got all the way through the government lobby and came in behind the Speaker's chair. It was only when she was at the point that she was level with the mace, which meant that she'd got all the way past the Clerk's table, that somebody realized it. I was sitting there thinking, "This must be a staff person, but a staff person isn't allowed on the floor of the House." Then, just at that instant, Mr Stelling and some other staff within the chamber went for it and surrounded this woman, who was yelling that she wanted to get at Ruth Grier, who was then I think Minister of Health—I'm not sure which ministry she had. But the irony was that this woman had walked past Ruth Grier. Ruth was sitting at her desk, so this woman was so out of it that she didn't even know the woman whose name she was calling.

In any case, that person could have been anyone. That person could have had any agenda and could have been armed. She was already around from behind, so she had walked in front of other staff, under the press gallery, past the Speaker's chair and now almost past the Clerk's table to the centre of the floor. Those of us who were in the chamber that day were so stunned afterwards, thinking about the potential of what that could have been.

Also, for those of us who were in the chamber the day the injured workers were up on the second landing, they were outside of our chamber, outside of those glass doors that are the main entry into our chamber. I remember hearing this thunderous noise, and it was the jumping and the chanting. I didn't mind that people were inside the building to say they had a concern. To tell you the truth, I can't even tell you which government it was. I don't know whether it was five years ago or more that this incident took place. I'm being advised it was when the Liberals were the government. But the scariest thing of all was that this is a 100-year-old building. That floor isn't designed to hold that number of people. The concern was that the floor, being on the second landing, would give way and those people, those injured workers, would fall through to the first floor.

Those are the incidents that I'm illustrating for you, where there hasn't been control on entry to this building and on behaviour once within the building.

I've often had people come to my own office. The interesting thing for me is that the first five years I was here, I was in the north wing on the ground floor and always grateful that at least if I had to exit quickly, I could exit through the window into the parking lot, which some of us in the north wing have been known to do in certain circumstances.

Then, the last six years I've been on the main floor in the main building, and particularly the last five years had the pleasure of being between the Premier's office and the mail room. If you want to be in a safe office location in the legislative precinct, I would suggest to you that between the Premier's office and the mail room is probably the worst place to be: If the parcels are either hand-delivered or come through the mail, it's nice to know your office is between the two ultimate sources. I did have a very serious experience with an individual outside my office, the details of which I'm not going to place on the record.

I think if anything, the reason that my concern for the public in this building and for the staff who work here eight-plus hours a day is escalating is because of the number of times that we have been evacuated due to bomb threats. In the first five or six years I was here, we probably were evacuated maybe once every 12 or 14 months; without putting a number on the table again now, all of you in this room know how many times you've been evacuated since you've been here.

We don't always have the evacuations when the House is sitting, or necessarily in the afternoon when we're here, so it means that it's our staff who are evacuated; it's our staff who have been at risk. If the House is sitting, we have 24-plus pages, young people for whom we are directly responsible, who also have been evacuated. Then, on top of that we have the public, to whom we have an open invitation to visit this building.

The legislative precinct belongs to the people of Ontario. It is the seat of their Parliament. We must have a building that they can come to freely, which is of primary importance, and equally important, that they can come to safely. I'm not sure right now that we are meeting the second obligation, that they can come here and know they are safe. I want them to come here freely but I want for us as legislators in this building to guarantee their safety as far as possible.

1420

How we do that: I think by now, after your deliberations—and I know there has been a core subcommittee of this committee touring other jurisdictions—you probably have better, more up-to-date ideas than I have. But I do think it's essential that we limit the public access to certain doors. Whether that is one door or more or one point of entry or more is a function decision. I think right now there are seven entries to this building. Now, the public may think there are five, but actually if they are knowledgeable they would know there are seven, and they don't have to do anything except say "Hi," if there happens to be someone there, and walk right through. So I think we have to, in the interests of engineering some-

thing that is a control so we know who is in this building, change the access through certain doors.

It's important that staff have full access in all doors, because they're often coming from different directions from outside of the building. All staff are wearing ID cards. There can easily be a system of a swipe reader at that entry point that they just swipe their card through and they come in very easily.

I notice that your previous deputation was someone who brings people here in large groups from the motor coach association. I think that where we have organized conducted tours, those tour operators have to be responsible for the people they bring in and they have to know who they bring in. Obviously, if you're operating a tour, they do have a list of who's with them; they come and sign in their group. They are responsible for that group and their behaviour while they're in the building.

The casual individual visitor to the building shouldn't be made to feel any less welcome because they're not part of a group. But this idea, you know, that you just go to the desk and you fill out, "Margaret Marland, such-and-such an address, Mississauga," and I don't have to show any identification that this is who I am, and then I have free roam—right now, I can go anywhere in this building. I can hide out in a washroom until after hours. It's a wonderful building. It's a 100-year-old building, and those of us who know the building well know how many nooks and crannies there are for somebody to hide, should they choose to hide, to a later time in the day when there are fewer people around. So I think who is in the building has to be recorded.

There's an irony, isn't there, from the fact that our staff have to wear identification so we know who they are, but anybody else, we don't need to know who they are? You can come and hide in my washroom right beside my office and stay there as long as you like. As somebody who works till 2 and 3 in the morning very often, I am a little nervous, to say the least, late at night because I'm wondering who is already in the building. I'm not worrying about who's come in after the doors have been closed and we're then limited to one access. I'm just concerned about who's been there earlier.

The other tremendous irony that we have in our current operation is, when do we put people through metal detectors? Isn't it ironical that we put people through metal detectors before they enter the chamber? That's the only time. What a farce that we're saying, "Oh, well, the members must be protected." The members are in the chamber and very few staff, and there are visiting public in the public galleries in the chamber, but suddenly we say: "Come in the building, walk wherever you like, stay as long as you like. We don't care who you are. We don't care what you may or may not have on your person. But, ah ha, if you go in the chamber, the hallowed halls of the chamber where the members are, we're going to put you through a metal detector and X-ray everything else on your person." That is the most ridiculous system that we have, and I know the arguments now are that metal detectors don't detect plastic bombs and other things. Then why use them going into the chamber? If we use a system of monitoring people coming into this building, we should use it at the point of entry, not just going into the chamber.

I don't know whether it was Mr Hastings or Mr O'Toole who pointed out to me very early on that we have ground windows, ground-based windows, some of which go into the basement around this building, that are constantly left open. I mean, for something as simple as that that is happening, we obviously need extra protection and alarms for ground-floor windows.

If we have the public coming for meetings, if somebody's coming in for a meeting with Margaret Marland, they should be able to say, "I have a meeting and I'm going to room 169," and the access is completely open to that person. If that person doesn't know where 169 is, then I think they just phone up to the office the way they do in the House of Commons and say, "Are you expecting John Smith?" and the answer is yes and they go to that office.

There are some areas of the building, which I won't take your time to discuss, that I think perhaps need more protection, more supervision than others. I also think something very obvious is that whatever you decide to do about the access through the main front door, which I would think from an architectural standpoint should be the main entry for the public, you have to remove things from that door that can be used as ramming rods, when you look at the damage to the doors that was done last week—by what? Guess what? Our ashtrays, our stone cylinder holders for ashtrays, where they became a weapon in terms of a ramming rod and destroyed those 100-year-old doors and the beautiful old iron hardware.

Members of my own family have come in my office in the early evenings when we've been elsewhere in the buildings in meetings, and taken 10 or 15 minutes going through my drawers looking for the spare car key, which they knew I had, and said to me afterwards, "You know, I got in without anybody having me sign in." This son isn't in this part of Ontario very often, so he's not known. He came in, walked freely into my office, which I had not been in the habit of locking, and, as I say, took 10 or 15 minutes going through my drawers. He could have taken anything and, worse, could have stayed in my office for me to come back, had he had a malintent. Then he took off. I didn't even know he'd been there. That's just one example. And I don't think that's an example just because my office is on the main floor.

So I wish you well in your recommendations. I hope that you will come to some conclusions this time that will manifest themselves in workable recommendations that everybody can support, because as I said at the outset, we are in changing times, and like it or not we have a responsibility to deal with those changing times. Because as much as we would like to continue the way we have in the past, in the free access and entry and circulation of people in this building, it's no longer feasible and I don't want to be the person who voted against a recommendation until we have a tragedy of any scope.

We're not dealing any more just with bomb threats. If you've stood out on Wellesley when the Metropolitan Toronto Police bomb truck comes in and you've seen the robot detonate the bomb, you know that those are things that weren't happening five years ago.

Thank you, Mr Chairman.

1430

The Chair (Mr Ted Arnott): Thank you, Mrs Marland. I have five members with questions. If you would care to stay and answer them, we'd appreciate your continuing advice.

Mr Miclash: Margaret, thank you for your comments. You touched a little bit on the metal detectors in terms of going into the chambers, and I think you brought up a very valid point there. Do you see any problem with those metal detectors being at one specific entrance for visitors—you've mentioned the main one as well—and having people go through them, much the same as an airport in terms of entrances? Do you see any problem with that at all?

Mrs Marland: The only problem I see is how we do it. As I say, I don't want the building to turn into Fort Knox. So I hope there's a way architecturally that it can be accomplished without there being a big lineup, the kind of lineup that's outside our chamber currently. So I think it can be incorporated into the door jams or some way that it's not apparent. It might even be better if it's not apparent, because if somebody is trying to slide through with something—sometimes they have a way, you know, of distracting the attendant on duty and avoiding walking through the definite archway.

Mr Miclash: True. A second area I'd like to touch on is the idea of having the podium set up on the front steps for demonstrations. You'll remember back in the days when we actually supplied that podium, allowed the speakers of the group and anybody who would be addressing the group from the Legislature to be out there. Do you see that as a deterrent for people wanting to storm the building, as we've had in two cases?

Mrs Marland: Well, you know, it's interesting because it's not in the past. We currently provide the podium, and the students last week knocked the podium over. The podium was already set up for the students last week, and they knocked it over in order to get into the building.

I think if the public wish to address their government, it's logical that they would come to Queen's Park, and we have to give them the assistance that we can. Certainly giving them a microphone and the podium, as far as I'm concerned, is just a courtesy, that we do that. What we do behind that or what kind of barricade we have to use is the decision that has to be made.

Mr Miclash: As has been pointed out from that particular occurrence, apparently the podium was actually not on the steps. It was down, I guess, closer to the crowd. The barricades were set up, and from somebody who was in that crowd, they had indicated that there were a number of people with megaphones, leaders of the demonstration, who were appealing to those who were going through the barricades from behind the crowd and of course were not being heard at all. I'm just wondering whether having those who maybe were in charge of the demonstration, who have already put their name on a permit or whatever, being visible in front of that group would have made a difference.

Mrs Marland: Well, maybe we have to develop a recognizable staging area and maybe it doesn't have to be right at the bottom of the steps. Frankly, if I'm a member

of the public who has an appointment in this building or I'm just visiting, I would like to be able to come in and access the building. But if there's a demonstration going on, I might be terrified if I've got a little child in a stroller or something and I'm trying to get through a crowd. So maybe we have to give the loudspeaker or PA system a separate staging area just away from the bottom of the steps so that the other public access is retained during a demonstration.

Mr Bartolucci: Margaret, thank you so much for your information and your experience, certainly. Just a question. The committee as a whole has discussed the possibility of a recommendation being the removal of the permanent barriers. Given your history and given—

Mrs Marland: The removal of which barriers?

Mr Bartolucci: The steel permanent barriers outside the front door. What are your suggestions or what are your thoughts with regard to that?

Mrs Marland: I haven't given that a lot of thought, but it is a very serious consideration for you, because we didn't use to have them, although I have a photograph of Bob Rae and I parading, interestingly enough, arm in arm around the bottom of the front steps when we had a demonstration with our native people one year, and this is back about 1986, and I notice in the picture there were some barricades behind there, but we didn't have them set up permanently. I think that was the thing. They pulled them out when there was to be a demonstration. But I also understand that they in turn have become a weapon. I don't know, maybe what we have to do is something that architecturally is more accepting.

I don't like the appearance of those railings and if they can just be flipped over they don't serve a purpose anyway. Maybe what we have to do is invest in some kind of architecturally integrated wall. I don't know if we can still get this wonderful sandstone any more, but if we could do something that would narrow the entrance. I think part of the problem with our front door, as opposed to Ottawa—if you look at Parliament Hill, the main access is through a very small door. They don't have these beautiful big doors across the front of their building. I would hate to lose the architectural beauty of the front of our building and I think perhaps that's what we would have to do: spend some money on some kind of a graduated wall that was a control point but didn't deter from the appearance of the building. But I share your concern about the railings.

Mr Bartolucci: A final question. You spoke about the importance of having an entry strategy, an entry protocol that's appropriate. As part of that entry protocol, I guess there should be a corresponding exit strategy as well. It's not good enough to control them on the way in; we must know who leaves, otherwise they can still hide in the bathroom, correct? So you're suggesting when you talk about having some type of controlled entry that there be a controlled exiting strategy as well?

Mrs Marland: I think it would have to be. In other jurisdictions, of course, you are given a temporary pass and you do sign in and you have to hand that pass back in as you leave. It's not complicated and it's not labour-intensive either.

Mr Morin: I'm aware, Margaret, that if you want to demonstrate in front of Queen's Park you need the authorization of protocol and then you have to be sponsored by a member of Parliament, and it's quite an easy thing to do. You write to the member of Parliament. You say, "I want to demonstrate in front of Queen's Park at 1430 on such-and-such a date." The member of Parliament advises the protocol, "Yes, I'm sponsoring them." Do you feel that it should be the responsibility of the member of Parliament to sponsor a group that demonstrates and, if so, what kind of procedures, what kind of regulations, what kind of rapport should the member of Parliament have with the demonstrators or the heads of demonstrators? I'd like to have your opinion on that.

Mrs Marland: I think there's no point in us being made responsible for a group by sponsoring them unless we are truly responsible. I have declined to sponsor some groups just to use our media studio, which is another area that has to be sponsored by a member. We have been totally irresponsible and inefficient in how we've dealt with this problem all along. If a member sponsors a group to come and express its opinion at the front steps, that member has to know who's responsible for the group and what the expectation of the behaviour is. There are still going to be examples where, with everybody knowing who the key organizers are and the key players are, there are going to be some individuals where it gets out of control. But if the onus is ours, as members, we'll be a little more fussy in following through on who is coming and how they're going to behave.

Mr Morin: Do you feel that it should be the responsibility of a member to sponsor a group? Do you think the member should have that power? Do you think the member should take the full responsibility of the demonstrators? I think of the incident of the students, for instance. It was one of our colleagues who sponsored the group. She's brand-new. It could have happened to any of these newly elected officials here. Of course, she accepted readily, but there was no communication with the group.

I know myself, if somebody were to ask me, "Gilles, would you sponsor our demonstration?" I'd say: "Sure, but under my conditions. Here are my conditions: that you will be self-policing; that you will respect the procedures, the regulations of the House," and a few other things. I would tell him or her, "Repeat that to me," so it would be repeated, and I would copy this down. I would also say to these people: "If you demonstrate with violence, if you demolish the building, if you do any harm, you will be held responsible. You will pay for that cost, not the public. You will do that. Either your group or yourself personally, whoever is discovered, should be found guilty and condemned accordingly."

1440

What do you feel about this, Margaret? You have many other occupations as a member of Parliament, many other responsibilities. What kind of a system would you favour? It's a difficult question for you to answer. Should it be taken out of the hands of a member?

Mrs Marland: The thing is, if it's taken out of our hands to do the sponsorship, then the question is who would do it? I suppose you would say it's up to the Speaker then; it would be perhaps the Speaker who

would give permission to these groups to come. I really think our greatest problems and our greatest occasions when I feel people in this building have been at risk, and I recall—and I'm trying to remember, to tell you the truth. It wasn't one of my colleagues. I think maybe it was one of your colleagues who two or three years ago had the same man visit him three times carrying a gym bag with a very large knife in it. You will perhaps recall the incident. That man visited that particular member three times with that gym bag and that knife inside. My own personal experience only involved one individual.

Where the public is at risk in this building I think, generally speaking, is more likely to be from an individual or an individual representing a group, either through the depositing of parcels in the mail and, as my case was, an individual person there, than it is the risk of the incident like we had last week. If you and I think, Gilles, since we've both been here the 11 years, we've really only had three or four instances that involved a large group. My greater fear isn't so much controlling the large group as it is the individual putting the larger number of people at risk. Unless you want to assign the responsibility of sponsorship to the Speaker, then I think members can continue to do it, but be very careful about how they do it.

Also, I think it would be fair to suggest that we're still going to be at greater risk by the non-sponsored group that decides to form up at Front Street and parade up University Avenue and we don't know they're coming. The police hear en route that they're on their way, and they may be the most volatile group that puts us at the greatest risk and nobody sponsored them.

The Chair: When you ask your questions, keep them brief and to the point.

Mrs Marland: Brief and to the point.

Mr Cooke: I notice you tell people to be brief now that it's our turn.

Mrs Marland: Don't feel restricted.

Mr Cooke: I only have a couple of questions. I wouldn't mind making a comment on that, though. I think you've maybe nailed it, that the only advantage to having MPPs sponsor the demonstrations is that at least generally we know that there's going to be a demonstration. If you put some responsibility on to the MPPs which could never be exercised that they're going to be responsible for the demonstration they've sponsored, as you said, then exactly what you've just said will happen: Of course there will still be demonstrations, but we won't know they're going to happen. So there'll be absolutely no preparation at all for those demonstrations. I think that would be really dangerous.

Mrs Marland: How do you go back to the member anyway and say, "It's all your fault?"

Mr Cooke: Exactly. It would be impossible. I guess I generally agree with the approach you're taking. You're saying there are some security concerns you have but we've got to maintain the integrity of public access to this building because that's fundamental to Parliament. But we've also got to be smart about how we provide access.

Some of this stuff has affected all of us. My mom called me a week ago and said, "The Legislature's

resuming on the 18th"—she was under the impression that there was going to be a throne speech—"and your dad and I wouldn't mind coming down to watch the throne speech," and before I even recalled that there wasn't going to be a throne speech, I said, "Well, I'm not quite sure that I want you to come down." They've both had heart problems, and I thought if there's a big demonstration and an evacuation and the elevators are off and you have to start using stairs, it puts their health at risk.

That's pretty minor compared to some of the security concerns that you're expressing, but we have to keep in mind that access means access for everybody, and access for everybody means people with disabilities, people who have health problems, and if they're frightened to be in the place, then they're denied access in effect. I think that's a concern that we have to have.

One of the areas I think we should look at, Mr Chair, that Margaret has raised is access to the lobbies, the east and west lobbies. It's long been a concern of mine that virtually anybody can get in there. We now have security guards on both sides, but anybody signs the forms, and that's one where you probably could hold the MPPs accountable. If you're going to sign a form, and they're going to have access to the galleries right on the floor of the Legislature virtually, the MPPs should be held accountable for whom they're signing forms and allowing them in. The visitors who come in there—I don't know if you have that problem on the government side as we used to—the number of people who come in there is just incredible.

Mrs Marland: It's terrible.

Mr Cooke: And I don't know who they are. When we were over there, I didn't know who most of them were.

Those are a couple of areas where I think you've made very valid points. I do think you're probably right on when you say that—the limited breaches of security from demonstrations I think is something that we've got to keep in mind. We cannot justify taking all sorts of actions based on the two demonstrations, in 1988 and the one last week, where there have been major breaches of security. I don't think ultimately, if there is a threat, that's where the real threat comes from.

In some of the other areas, I think you've struck not a bad balance and we should take a look at some of the recommendations that you're making. What comes to my mind, though, is that we're not just talking about staff here, we're talking about MPPs and security of MPPs. It still will never answer the question of when cabinet ministers or the Premier are on the road, where bigger demonstrations occur and quite frankly more access is available in terms of those demonstrations and individuals, and at constituency offices for MPPs.

I have not felt threatened in this building; I have felt threatened a couple of times over the years in my constituency office. I don't know how you ever get to deal with that. We're not talking about that here, but every other time in my 18½ years at this place that we've talked about security, we have talked about constituency offices. Maybe we're not talking about it here because no one's ever been able to answer how we deal with it. I don't know what your experience in your constituency office is, but that's where I felt threatened a few times.

Mrs Marland: Fortunately, I'm relieved to tell you that my experience hasn't been in the constituency office but, having said that, I wrote a note immediately to Marilyn Churley after her experience, and Bob MacKenzie, because my heart went right out to them. I mean, I don't care—everybody knows in this building that my collegiality goes across all party lines, because that just happens to be the way I am. When something happens to one of my colleagues of any nature, I'm very concerned for that individual on a human base. Wow, what they experienced, which was in all the papers—I'm not talking about something that wasn't known either—I couldn't imagine anything more horrific for them personally, Dave, but also for their staff.

1450

When you talk about the cabinet travelling, whichever government it is, yes, by the very essence of their job and what they're doing they are always at risk from even one individual wacko. It doesn't have to be a justifiable cause representing a large number of people. It's the essence of our job.

But when we talk about this building, I think what you just said about your parents is an example that's important for us all to consider here, because I didn't address that. It is true that if we're looking at the safety of the public in this building, we have to ensure that if they are older or frail and we're going to cut off the air circulation and the elevators, if that happens, it has to happen for a very good reason.

As I said, we've been lucky in the years that we've been here that those two major examples, last week and 1988, have been the only two major ones where the people outside have gotten in and been out of control inside. But the fact that there only have been two doesn't mean there are not going to be more. I think you just have to look at how society is behaving. We didn't used to have vandalism and demonstrations after sports events either, but we've had the kinds of stuff we've had going up and down Yonge Street after a few events last year. Those were things we've never had before either.

We are facing a changing society, and as far as I'm concerned, it just increases our responsibility to think that if your parents or somebody else—every aging person is related to someone, and we have a responsibility to say, "Yes, come down to the throne speech or the budget and be safe from demonstrations." The way that's going to have to be managed is that we know those people are coming and we are responsible for them as our visitors and our guests. If there are some who don't know any of us, we still have to know who they are, and on those kinds of days, they're going to have to come in through one of our controlled members' staff access points so they're not put at risk of coming through where there may be a demonstration. So that would be one way of addressing that concern.

Mr John Hastings (Etobicoke-Rexdale): Thank you, Margaret, for coming and making your points known, particularly about after-hours security. What specific things do you think we ought to be doing with respect to after-hours security for staff? I was thinking more of staff than other folks in here, not just political staff but staff of the building, say after 5 or 5:30 in the evening. You have

alluded to a number of things without mentioning them. I think I understand why. You have a hesitancy to do so for several reasons, I suspect, but what sort of solutions do you think we ought to undertake on that side of the coin?

Mrs Marland: I think it has to be mandatory for people to sign in once the building—when the House sits until 6 o'clock, until 6 o'clock all seven entrances are open. I think it would be great that once all the other entries close, we do a sweep of the building. The officers are sitting there at all these different entry points. If six entries are closed—and presently it's the east door that's left open—then I think they should do a sweep of the building.

I find when they do a sweep around midnight to see if my light's on because I'm there or I've just left my light on, and they try the door, I feel comfortable then, but I really would have liked them to try my door at 7:30 as well. It's actually easier after hours because they are down to one entry point and everyone signing in. And when I'm talking about signing in, I'm not talking about coming in and nodding and saying, "Hi, Ed" or "Hi, Joan." Do you really know who that person is? I want to be sure that you do know who that person is who's signing in and that they are going to the Premier's office or Mrs Marland's office and know that they go where they say they're going. It's very easy to walk in and say, "Oh, I have a meeting in the government caucus meeting room."

Mr Hastings: What do you think we should do with the freight elevator on the east side of the building, particularly?

Mrs Marland: The wonderful one that goes—well, you see, I don't even want to talk about where that goes.

Mr Hastings: I know.

Mrs Marland: Because that's the elevator that's right outside my office, and that is the worst example. I'm glad you're going to be discussing that, because if people knew a little bit more about that—it was you who walked around with me, I think, wasn't it, and pointed out some safety concerns last summer?

Mr Hastings: Yes, especially that one, because of where it leads to and from.

Mrs Marland: I know.

Interjection: Where is that?

Mr Hastings: It's on the record.

Interjection: I'm curious now.

Mrs Marland: I'll show you.

Mr Hastings: Yes, we'll show you.

The Chair: Mrs Marland, thank you very much for your presentation to this committee. You've stayed a little longer to answer our questions. We really appreciate your advice and your input.

Mrs Marland: Thank you, Mr Chairman. I've appreciated the opportunity, especially since I was given 45 minutes. That's pretty amazing.

Mr Cooke: That's a normal introduction to a speech by you.

Mrs Marland: Yes, but if you've noticed, I don't get to speak any more. Thank you very much and good luck with your report; it's very important.

MARK KEILTY

The Chair: I'll call forward now Mark Keilty. Could you just introduce yourself and tell the members who you are and why you're here?

Mr Mark Keilty: Hello, committee. My name is Mark Keilty. I am a 12-year veteran of the Ministry of the Solicitor General and Correctional Services. I have worked at the Toronto West and the Toronto Jail and presently am a recreation officer at the Toronto East Detention Centre. I am also the local president of OPSEU. I would like to thank the committee and Ms Freedman for making a phone call on Friday and offering me a chance to speak before this committee.

I was, I guess you could say unfortunately, here on September 27, the day of the—in my opinion, it was a serious riot. Even though the people on the outside did not actually get in, they were close to challenging the security of this building. Quite frankly, I can't say that I was proud to be part of that group outside. When the actual barricades came down, it was pretty well every man, woman, child and grandparent for themselves. I was affected enough that I wrote Mr McLean a seven-page letter, which I understand you have in your possession right now. I'm going to read a few of my own personal excerpts out of that letter as I do my presentation.

To begin with, I would like to quote a couple of things from the Charter of Rights and Freedoms. I'm sure you've all heard them before as members of this Legislature. However, as part of my presentation I've highlighted a few things which I'd like to express.

Obviously, the people outside have been trying to maintain that the present government listens to them; I guess that's why they're doing these things. The beginning of the Charter of Rights states:

"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

"Guarantee of Rights and Freedoms

"1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society," of which the fundamental freedoms—and I guess this is what the people outside are trying to do. Unfortunately, it's not working out that way.

"Fundamental freedoms

"2. Everyone has the following fundamental freedoms:

"(a) freedom of conscience and religion;

"(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

"(c) freedom of peaceful assembly," which certainly doesn't look like it's happened in the last few months, "and

"(d) freedom of association."

1500

Freedom of expression is detailed, of which I've highlighted two quotes I would like to take to pass on to the committee.

"Freedom of expression was entrenched in the charter to ensure that everyone can manifest thoughts, opinions, beliefs and indeed all expressions of the heart and mind,

however unpopular, distasteful or contrary to the mainstream. Human activity cannot therefore be excluded from the scope of guaranteed free expression on the basis of content or meaning being conveyed...."

It goes on, and near the bottom of freedom of expression—this is where the people and the demonstrators are fallen into violations of the freedom of expression:

"While the court has held that expression which is communicated in a physically violent form may not be protected, communications such as hate propaganda cannot be considered as violence nor as analogous to violence so as to fall outside the protection of this subsection. Moreover, even threats of violence fall within the protection of this subsection and their suppression must be justified" under the freedoms.

There are restrictions on picketing which have to do with unions and setting up peaceful and democratic pickets, as well as freedom of assembly, and freedom of assembly is the one that I will discuss a little bit later on.

To begin with, before I get into my actual letter to the Honourable Mr McLean, I would like to discuss a couple of things that I believe can be enforced via the police and the crown, and that's under unlawful assembly in the Charter of Rights and Freedoms as well as the Martin's Criminal Code.

The demonstrators on Wednesday—and I have seen the news clips. I was not down at that, nor do I plan on being at any more where there's actually violence, nor do I plan on being down here period when I hear of a protest. What I've seen is that people are just becoming a little bit too aggressive in their conveyance of the freedoms, so I personally will not be organizing any more demonstrations. However, I will still exercise my right to freedom of expression.

The four student demonstrators who were charged—and I know that this legislative body had nothing to do with section 51 of the Criminal Code. I agree with the theory that to charge these students with this is—definitely they were intimidating the Legislature. However, after further review of the Criminal Code, I think there are other options that we can—not threaten, but we go can forth and actually charge these volatile protestors with if need be. I want to read a couple of them to you just to enforce what I'm saying.

Section 51, in my particular opinion, is if they had showed up with firebombs and if they had shown up with a tank out front and if they actually tried to cause some serious damage to this building. But a lot of the demonstrators, as I saw on TV—and I have actual videotape footage from out front—what they did was they got by the security brigade and they got by the police and then they actually caused some severe damage and unfortunately some unequivocal damage to this House that's never been seen before. I was listening to Mrs Marland and she was quite passionate about the building and how it was damaged, and that to me is totally unacceptable.

I think what we have to convey to the people is that if you do show up mad and if you do go above and beyond your expressions, you will be charged. The courts should be taking these people seriously and the police should be abiding by the Criminal Code, and that's what I'd like to

get into right now, before I get into the actual excerpts from my letter.

Under section 63 you have a chapter known as "Unlawful Assemblies and Riots." I would like to read out sections 63, 64, 65, 66, 67, 68 and 69. I won't go into the actual interpretations. I'll just read out the charges. I think you'll all agree with me that a lot of these people out front could have been charged, and maybe in future can be charged, with these actual Criminal Code bylaws.

"Unlawful assembly—Lawful assembly becoming unlawful—Exception.

"63.(1) An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when they are assembled as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that they

"(a) will disturb the peace tumultuously; or

"(b) will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously.

"(2) Persons who are lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in a manner that would have made the assembly unlawful if they had assembled in that manner for that purpose.

"(3) Persons are not unlawfully assembled by reason only that they are assembled to protect the dwelling-house of any one of them against persons who are threatening to break and enter it for the purpose of committing an indictable offence therein."

"Riot.

64. "A riot is an unlawful assembly that has begun to disturb the peace tumultuously."

Out of "Riot" I'd like to read the annotation that I've highlighted: "It is essential to prove of a riot that there be actual or threatened force and violence in addition to public disorder, confusion and uproar.

"Moreover, even if a tumultuous disturbance of the peace breaks out during an assembly, the accused must be shown first to have taken some part in that disturbance in one way or another. In addition, the requirement that the persons in the neighbourhood of the assembly fear 'on reasonable grounds' that the members of the assembly will disturb the peace tumultuously requires that these grounds be manifest to any reasonable person within the assembly.

"Punishment of rioter.

"65. Every one who takes part in a riot is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years."

"Punishment for unlawful assembly.

"66. Every one who is a member of an unlawful assembly is guilty of an offence punishable on summary conviction."

"Reading proclamation," which basically is reading the Riot Act—having worked in the prison system for almost 12 years, we've had to read the Riot Act in-house a few times ourselves. This happens when: "A justice, mayor or sheriff, or the lawful deputy of a mayor or sheriff, who receives notice that, at any place within his jurisdiction, 12 or more persons are unlawfully and riotously

assembled together shall go to that place and, after approaching as near as safely he may do, if he is satisfied that a riot is in progress, shall command silence and thereupon make or cause to be made in a loud voice a proclamation in the following words or to the like effect:

"Her Majesty the Queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business on the pain of being guilty of an offence for which, on conviction, they may be sentenced to imprisonment for life. God save the Queen."—Very strong.

"Offences related to proclamation.

"68. Every one is guilty of an indictable offence and liable to imprisonment for life who

"(a) opposes, hinders or assaults, wilfully and with force, a person who begins to make or is about to begin to make or is making the proclamation referred to in section 67 so that it is not made;

"(b) does not peaceably disperse and depart from a place where the proclamation referred to in section 67 is made within 30 minutes after it is made; or

"(c) does not depart from a place within 30 minutes when he has reasonable grounds to believe that the proclamation referred to in section 67 would have been made in that place if some person had not opposed, hindered or assaulted, wilfully and with force, a person who would have made it."

I would like to comment on section 69 near the end.

"Neglect by peace officer.

"69. A peace officer who receives notice that there is a riot within his jurisdiction and, without reasonable excuse, fails to take all reasonable steps to suppress the riot is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years."

Thanks for staying with me for that.

I think you can back up section 51 through the courts with those sections in the Criminal Code. Personally, I think that there'll probably be a few more demonstrations in the next few years. Like Mrs Marland said, change is coming and people don't accept change that well. I don't think it's out of the question that the security of this institution may be challenged again in the future. Unfortunately that's reality; that's not fearmongering.

1510

In Correctional Services we have the tools in place to quell riots. We can read the Riot Act. We can also charge the inmates in our custody with inciting the disturbance. The same goes for the police force. They must ensure that they abide by the Criminal Code when they are dealing with public disorder. Therefore, I think you'll get the message across that if people want to come to this assembly and challenge the security, that they are going to be dealt with in a strong and serious manner. Section 51 certainly speaks of that: Up to 14 years incarcerated is a very strong sentence.

There are a few things that I'd like to read from my letter of September 27, just to put it on the record, that concerned me as someone who was out there with staff from my institution as well as from all points across the province. If you'd like further comments on them you can question me on them; if not, then this is how I saw it as one of the people who was out in front. I think Mr

Christopherson was out in front with the group. He certainly saw that there was a large crowd out in front. That was before all heck broke loose. I've actually put in a couple of recommendations as to how maybe we can handle these things in the future.

"I arrived at Queen's Park with my colleagues. We made our way to the front of the crowd. We spoke with the Metro police officers who were guarding the barricades. I was informed that there were 55 officers on duty to protect the Legislature — of which 18 were from the mounted patrol unit. They were dressed in riot gear. One officer asked me" on the front line "how many demonstrators were going to show up. I told him, probably about 3,500." He was a young guy. "He looked surprised, yet slightly nervous.

"1230 hours: With the crowd starting to fill in, the demonstration was beginning to heat up, especially when the crowd saw photographers peering out the upper windows...." When we were down below, we could actually see a photographer hanging out one of the windows on the second floor. As soon as he stuck his head out with his camera—the next day I think this picture was in the *Star*, because it certainly looked, from the vantage point I had—he was actually a *Star* photographer. As soon as the crowd saw that, that was the beginning of the frenzy, in my opinion. They knew that it was "showtime," and I think I put that in my letter. "Total presence was approximately 25 officers. The mounted patrol unit was off around the corner of the building—behind the media area. There was another group of mounted officers behind the television mobile units. The atmosphere of the crowd started to heat up."

The beginning of the actual demonstration was when they actually started speaking on the loudspeakers. Unfortunately, the loudspeaker was in the middle of the crowd and no one really knew where it was coming from. It was almost like they were passing the mike from person to person. I think they had a gasoline-powered Honda generator there for the actual power to the microphone. It was quite effective because you could certainly hear it, even though at times I wasn't paying attention to what was being said.

However, the one thing that I distinctly remember was when the throne speech was about to begin—I believe it was 1400 hours, or 2 o'clock—the individual on the mike at the time stated: "The throne speech is about to begin. Let's go in and hear it for ourselves." Well, that got the crowd going and, as you read in the letter, I certainly stated that the barricades were used at that time as battering rams on the front door. The police were still there. However, they didn't want anything to do with the barricades on the front lines. There were two barricades, I believe, individual barricades actually being thrown up into the crowd at the front of the doors. I was off down to the side by the pillars just looking on in disbelief.

The actual disturbance—I'm quite critical of how the police handled it. I believe that they themselves were not getting proper guidance from whoever their superiors were as to what they should do, because as soon as they saw the crowd rushing—I say this in my letter to Mr McLean—it was a "fight or flight" option. Several of the officers fled the stairs and just went down and around to

where the mounted patrol unit was and that left a bunch of the officers actually at the front of the doors which, we saw in the news, is where the actual confrontation began with the public and the police. I'm not knocking what the police did, because it was a frightening experience for them, I'm sure.

Just in regard to what happened on February 7 last week, I do have videotape footage of the disturbance. I was scanning the news waves and I picked up a couple of things that sent up a red flag. One of them was the officer on the front. I think he must have been a staff sergeant or even above that. What I did see was that he gave the motion for the officers on the stairs to move off the stairs, and that's when the students were charging. I don't think he had any will to fight these students, nor would I have if I was in that situation. I think they recorded that 200 to 300 students actually rushed the front doors of the Legislature and there were only, I believe, based on the media reports, 32 officers who were being utilized that day, as opposed to roughly 80 on September 27.

In my opinion, on September 27—once again, about 300 people rushed the stairs, there were enough officers actually on scene to quell that and that's why they didn't get into the doors. The doors were also chained that day. I don't think they were chained last Wednesday. That was another thing that probably should have been done or could have been, but I understand you don't want this place looking like it's locked up for public entrance.

Getting back into the police presence, we in Correctional Services have a ratio of staff to inmates that we like to keep topped up. Our institution, for instance, houses about 500 inmates, of which on any given day we can have 40 correctional officers on scene, which is a ratio of one correctional officer per 12 inmates. We don't want to go much below that.

With the demonstration on September 27 you had 6,000 demonstrators—roughly 5,000 to 7,000 was the media report. It looked like it was in the 7,000 range, in my opinion, because it was right down to College Street. If you have 80 police officers on the scene, you had a ratio one to 75 protesters, but that's actually one to four if you look at the fact that there were only 300 demonstrators who were actually wanting to use force and charge the Legislature. That's why, in my opinion, there were enough to handle it, providing they were effectively dispersed.

On February 7 you had 1,200 students, based on media reports, and you had 32 officers, which is a ratio of approximately one to 37; or if you take the actual 200 demonstrators who challenged the doors, that's a ratio of one to six—until they got in, had they not been met with force. That's when the Queen's Park security and OPP's backup units were in place, and held the demonstrators at bay in the foyer.

Before I open it up for your questions, one personal opinion I have is that in Margaret Thatcher's election in 1980, one of the first mandates she put in place was actually giving the police a raise. The coal miners were on strike, they'd been on strike for a long time and they were, pretty well daily, visiting the House of Commons and showing a lot of force on the House of Commons.

She knew that she needed the police force to back her up, so she actually gave them a raise to basically say, "I'm with you and you're with us"—not that I'm advocating that the police get a raise, but when you're looking at a trial balloon of \$90 million in expenditure cuts to the OPP and even your own Queen's Park security here, as a member of OPSEU I know what they're actually having thrown their way. There are threats of privatization and security cameras, bringing down the numbers of security and all that. That's one thing: It must be demoralizing for the front-line troops. After all, these guys are performing the front-line services that are protecting the legislators in this House just like in Correctional Services we're protecting the public from the inmates escaping.

Once again, you've got to look at a little humanistics here. These guys are protecting you in this House. In my letter I said that I want you to be protected, and that's why we didn't participate in trying to challenge the doors on the 27th. Once that happened, we just said, "Whoa, this is out of hand." But I do say that the morale among these guys must be a little bit wishy-washy in that, "Am I going to get hurt, when these guys are going to pass legislation to cut me or cut my job or cut the services I provide?"

1520

I think you should take that into consideration, because these guys in the blue suits out there are your safety valves. That's not, in my opinion, too political; I think that's reality. I know a few OPP guys, and I know a few Metro police boys, and they're talking just like Joe Citizen out there, okay? The front-line service providers are the guys that are going to protect you and they are going to protect the peace. However, I think that everyone should be working as a team, including the police and the MPPs in this House.

Mr Miclash: Mark, thank you for your presentation. I certainly like the points you have given us in terms of both the barricades and the public address podium.

Mr Keilty: Sorry to cut your question off. One thing I did want to say and I didn't mention—you've all got a copy of the letter—is that as to the barbed wire on the barricades, I've spoken to a few people that that's a little bit much, that that's almost turning it into Fort Apache. However, I think I did say "if need be." We're not quite at the "if need be" yet, I don't think.

Mr Miclash: That's something I was going to get on to. Going beyond both the barricades and the public address system, entering the building—you're obviously quite familiar with the area and what goes on around Queen's Park—how do you feel about people being asked to go through a metal detector to have their bags, briefcases, purses—the airport setup—how do you feel about that at the front entrance of this building?

Mr Keilty: I heard you ask Mrs Marland the same question, and I listened to her answer and I thought her answer was pretty good. Personally, I don't have a problem with that. I would walk up and I would have a metal detector flashed on my body and I would let you view my bag if need be. You walk into our institution, for instance. Lawyers have been known to take knives upstairs in their briefcases, yet they call them pocket knives. We don't know what they're doing with those

knives, and we've had a few confiscated off the lawyers. The first thing they do is they have to go through a visual wand. We've got the wand. If the public has to do that, I don't think that after what's been going on down here they'd have a problem with that. Personally, I wouldn't have a problem, because I have a security conscience.

Mr O'Toole: I have just a comment. You've gone to a great deal of trouble on this absolutely detailed report. I agree with you. The challenge for this committee is really to balance the demand for safety and security for everyone, both visitors and people working here, on the one hand, and to have freedom of access. The Fort Apache mentality is certainly not what we want.

There were a couple of points in here. How about the use of any sort of mace or pepper spray? Do you think that has a place here? You mentioned in your report on page 6 that pepper spray was used. Do you think it has any place here at all under any circumstances?

Mr Keilty: The staff who are presently in charge of security?

Mr O'Toole: Yes, the security force.

Mr Keilty: As I think Mr Cooke said earlier, you don't know when the demonstrations are coming. As Mrs Marland said too, they could be walking up from Yonge Street or wherever and the police only know they're on their way. What you're going to rely on is the first team of front-liners, meaning your in-house security and a few of the OPP. I think it would be a good idea, just in case it's needed. Even in corrections, we're advocating that when we do community escorts we would like to have some pepper spray.

Mr O'Toole: I have just a few little points here. You said you have studied riot phenomena. A crowd mentality takes over. I took psych 101 one time in my life, and they do cover that whole mob mentality and attitude. Are there symptoms or signs that the police or trained people like yourself would know when a certain mob mentality has taken over?

Mr Keilty: As I said, I don't know if on September 27 the crowd actually felt they would be getting into that, but I think certain people within the group were prepared to take it above and beyond a civil demonstration.

Mr O'Toole: To return to my point, really the follow-up to that was, do you feel that there are professional instigators involved in these? That was suggested in some of the news reports, that several of these people have been videotaped as key focus people in many of the demonstrations. My question is, very specifically, do you think that it's appropriate for action to be taken quickly when this repetitive pattern, the same protest groups and people show up, that some action should be taken in advance?

Mr Keilty: Well, yes, and I said to use the Criminal Code against them if you can actually pinpoint the person. That's why I said the podium too is a good idea. Mrs Marland said there was a podium set out for the students that day, but there was none on the 27th. I had said I'd been to a demonstration in July 1993, I think it was, and there was a huge podium, but it was brought in by the CAW. When it pulled up to the front of the House, it had a band on it and everything and people didn't care about storming the Legislature. Mind you, it

was a Saturday. But that's the thing, they were looking at the band and listening to the speakers on the back of the truck, so they didn't care.

However, getting back to the point, if there are certain people who show up to these demonstrations with the sole purpose of probably causing civil disobedience—and that one individual I mentioned in my letter knew the crowd was worked up into a frenzy before the actual speech began inside the House, so when he got on the mike and said, "Let's go and hear the speech for ourselves," the crowd was already going nuts. Then they burned a placard of Mike Harris's face in effigy, and that right there is where you could have got them on section 51, because they were burning a placard of the Premier's face. That was definitely inciting something. You can't pinpoint who it was, though, because it was in the middle of a crowd with a microphone on a generator.

Mr O'Toole: On the whole thing of crowd control, the last two points I'd like to have some help on, there's some question of video surveillance. I'm familiar with the Quebec situation and Ottawa. The video thing itself seems to be a funny dilemma as well. It's sort of a further intrusion into the public right to privacy, in a way, and people being flashed up on the 6 o'clock news can result from those very pictures. Yet it can cause the confrontation we're trying to avoid. People see the video cameras doing a scan or somebody filming what's going on. I've heard recorded that one of the members was very concerned about his picture being taken. That in itself is an infringement, an intrusion. What's your response? Is that more confrontation?

Mr Keilty: Yes, I think so. That's Mr Wright's question anyway. I think he's had a few comments on that. I know, just speaking in-house, we had a concern within our facility that they were videotaping—they're called codes. When a code goes off, in-house they were videotaping the officers responding to codes. We challenged that saying: "That's a violation. We don't come in here to get videotaped. We come in here to handle problems when problems arise."

Mr O'Toole: You mentioned Margaret Thatcher and that the current venue for security is a high-mount camera surveying the whole city, watching everything. That's the new mode of policing in Britain.

Mr Keilty: Just like they can do from satellites now.

Mr O'Toole: They can zoom right into a bathtub.

Mr Keilty: As a deterrent, I think having a couple of cameras on the outside of the Legislature is like having a couple of cameras on the outside of our prison. They're a visual deterrent, yes.

Mr O'Toole: It's coming. You mentioned in your long, detailed memo here that the increased presence of the boys in blue—I think that's your term—sort of heightened the idea of we versus them.

Mr Keilty: It did.

Mr O'Toole: How do you handle that? Do you keep them inside until the problem and then rush them out, or what do you do?

Mr Keilty: The next day, watching the legislative network, I think Mr Cooke mentioned that he wasn't too happy, and I think Mr Conway said the same thing, that around the back they had everyone sitting with guard

dogs in the cars. I think you should not have that on a regular working day, but I think it would be a good idea to have that when you know there's going to be a demonstration of substantial numbers.

That's the thing. The people were looking up and you could see three rows of officers and then when the jostling began on the gates, the actual police came back down and all the cops were on the front line and that just stirred everybody right up, because then it was definitely a confrontational setting. That's why you need somebody up on that podium just to have someone addressing the crowd because everyone was hearing the stir-ups, the war drums and everything. It was going nuts. You heard it in here, I'm sure. I could hear it on the TV. When I videotaped it, I could hear the war drums beating in the House while he was doing his speech.

The Chair: Thank you very much, Mr Keilty. We really appreciate your presentation. Your very thoughtful letter to the Speaker was very helpful to the committee as well.

Mr Keilty: Thank you for the opportunity.

1530

MARIA FRANGOS

The Chair: Our next witness is Ms Maria Frangos. Welcome to the Legislative Assembly committee.

Ms Maria Frangos: I'd like to start off by saying that I thank the committee for giving me an opportunity to express my views and opinions this afternoon.

First of all, I want to start out by talking about the September 27 demonstration. I was there that day and, looking back on it, I see it a little bit differently than most people have described it. As to the atmosphere, the climate that was out there, because I was right up at the front, I saw a lot of anger. I saw people so angry at the policies brought about by this Conservative government. Basically, I would call it economic warfare. Now some may agree and some may not agree. However, that's the way I see it.

When you have a whole bunch of people faced with this, when you wage war against a large part of the people in this province, when you're causing children to starve, when you're causing people to be out on the streets, when you're denying people basic human rights, you're in a situation where you have no recourse in many ways. You feel like you're isolated. You feel alienated and you feel like you can't speak out and defend your rights because you don't have the energy sometimes to do that except at a demonstration. You're standing around and you're looking around and people are all in solidarity. I don't think the people stormed the front because they saw somebody hanging out of a window with a camera. I don't think it was showtime, as our previous speaker said.

I think Mr Harris's government has taken an offensive stand against the people of this province and they're not being protected from his economic warfare. I think he should be able to take a defensive stand and I haven't heard him once speak to this in detail as to what has caused this frenzy.

Since Mr Harris's election in June 1995, more money has been allocated to security and policing, especially out of Queen's Park, than it had in previous governments.

Denying people access to Queen's Park is going to alienate them even more than that of his economic policies and it makes them feel powerless, like they have no voice. It's hard to speak out and defend your rights as a citizen when you are placed in that position.

I don't think that cameras or metal detectors or more policing or barricades is going to help the situation. What people need right now is to be listened to, and I think that once people are listened to, the violence will end.

I remembering taking several history courses and learning about stuff like the French Revolution and the American Revolution, how during the French Revolution people were starving in the streets and they stormed the Bastille and they broke through the prison. We look at that, and our teachers taught us that this was a good thing, that this was how democracy came about in France, for example. When we look at our present situation in Ontario, nobody seems to link those two events.

I think no other government has faced such extreme opposition as this one has. I demonstrated against Bob Rae during a student day of protest when Dave Cooke was Minister of Education. You never saw students storming the front and breaking things. I think the reason for that was because they felt that even though they couldn't change things, they were listened to. But with this government, people do not feel like they are listened to and that's why you're getting all this violence.

During the September 27 riot, a lot of people were brutally beaten. I was one of them who got hit in the head after a police officer told me to leave. I was on my way to leave, I turned my back and I was hit on the head three times with a police baton. I'm not one who goes up against the cops, because first of all I'm epileptic and the last thing I want is a head injury. If a cop's going to tell me to leave, I'm going to leave.

I looked at some video footage and I slowed it down and I saw cops, one in particular who I can't even identify, reaching out, going out of his way to strike a woman on the head over and over again, when she was being dealt with by a couple of other officers. In the security situation during that day, I don't think the cops were afraid at all. I think that a lot of people were badly hurt and excessive force was used.

However, I do see the concern for the need for security, after what happened on the national student day. I do see people's concern because innocent bystanders could be hurt, more damage to property, which would result in the taxpayers paying for it, and I don't think that's necessarily fair. I also don't think that it's the best way to go about challenging the government, because I think you're just going to get hit harder in return. I am personally in favour of general strikes. I think it's better to hit people in the pocketbooks, because it's the only way they can listen.

So I don't agree with this violence, but I can certainly understand it. I think that—again I can't stress it enough—once this government starts listening to the people and stops saying, "We're a majority government. You voted us in"—I bet if you were to call an election

tomorrow, this government would not come in. Time and time again, Mr Harris said during his election campaign, "If I break one promise, I'm going to resign." He's broken several promises and I would like to see him challenged on that election campaign. Of course, I don't think there's much chance of that happening.

I don't know how to improve the security here. I don't have any answers. All I know is that there are a lot of people hurting out there and there are a lot of people who are angry and I don't think this is going to stop whether you put surveillance cameras, barricades, metal detectors, build a fortress right around Queen's Park, this is not going to stop.

That's all I have to say today.

Mr Bartolucci: Maria, thank you very much. You know, it's very important for us as committee members to hear that you as a young and future leader advocate non-violent methods of demonstration, because that's so important.

Having said that, could you maybe give us your idea with regard to demonstrations and the responsibility that the demonstrators should have for their conduct? How could you see a protocol being developed so that demonstrators have ownership in the method in which they demonstrate?

Ms Frangos: I think that during demonstrations there are various different groups that are there. When a demonstration is called, group leaders should be contacted to let the people in their group know that this is going to be a non-violent demonstration, because they're going to be hit hard back, whether it's with police batons or with prison sentences of up to 14 years. I think that should be stressed by group leaders, because a lot of people who come in, they get worked up into a frenzy, they're angry. I just think that group leaders should sort of stress that before, because you're not going to have—I'm not saying it's the group leaders' responsibility. Many times it's just individuals who sort of come up to the front and then they get worked up and down the barricades go, but I think it should be stressed that way. I don't know what other way it could be stressed.

1540

Mr Bartolucci: Just I guess one final point, and it's something that I have to tell you that all the members of the committee, whether they're on the government side or on the opposition side, have had some concerns about, and that's with regard to the permanent barriers. Because you've demonstrated out in front, do you find the permanent barriers an object to heighten the anger of the crowd?

Ms Frangos: I don't think it directly heightens the anger of the crowd because of the barricade physically existing. I think it alienates people because it denies them access. I don't think that that mob would have stormed the front if the barricades were not there. I seriously doubt that. I remember when we used to demonstrate against, like I said before, the NDP government for students' rights, the microphone was right up at the front and people would speak from there and there was no problem. There was never any problem. I think that if you allow whoever's speaking during demonstrations, union leaders or what other groups, if you put the

microphone up at the front and then just have a few cops around like it used to be, I don't think people will want to get past that.

Mr Morin: I want to congratulate you for having the courage to come in front of the committee. You're a young person, you voice your opinion. That is democracy. Not everyone may agree with what you say, but at the same time you take the time to come and see us.

You participated in two demonstrations. When you participated in those two demonstrations, was there a sponsor?

Ms Frangos: No, there wasn't a sponsor.

Mr Morin: You know when I say sponsor, because normally the procedure is that a member of Parliament must sponsor you.

Ms Frangos: Right. No, I'm not—

Mr Morin: That you're not aware of?

Ms Frangos: No.

Mr Morin: Were you responsible for the demonstration yourself or you were part of the demonstration?

Ms Frangos: I was just part of the demonstration.

Mr Morin: Who was the group that was demonstrating?

Ms Frangos: Many groups: the Ontario social justice committee, the Ontario Coalition Against Poverty, OPSEU was part of it. There were many different—

Mr Morin: But was there a head? Was there someone responsible for the whole thing, that you know of?

Ms Frangos: Not that I know of, no.

Mr Morin: I'd like to know more about this, because there are certain responsibilities given to a member of Parliament, I think, that should not be given, because why should a member of Parliament be responsible for demonstrations that turn into violence when there's no procedure set or there's no communication that is established between the people who organize the demonstration.

Would you see a form of procedure to demonstrate that should be in place, that should be in existence? Let me give you an example. Let us say, for instance, I'm a ham operator, a radio operator, so I demonstrate against the government because I feel that it won't allow me to put up an antenna. So that is my goal. I come along and I get in touch with the member across here and I say, can I demonstrate? He says, "Yes, I will, but at the same time please let me know what you plan to do." I would explain to him exactly and it's non-violent and just to voice an opinion. Do you think it should be his responsibility or it should be a body completely separate? It could be the police, it could be anybody else. How would you see it, because obviously you are preaching non-violence.

Ms Frangos: I don't think anybody can be responsible for individuals' actions. Forty or fifty different groups can come together and they can assure whoever sponsored the demonstration that it's going to be a non-violent demonstration. Nobody has any way of knowing that. Nobody knows what the climate is going to be like.

Mr Morin: But do you feel, if you are to demonstrate, anyone, that there should be conditions attached to it?

Ms Frangos: Yes, but whether those conditions are adhered to is—

Mr Morin: Yes, but the conditions are up to whoever the experts are to establish: "These are the conditions. If you want to demonstrate, yes, that is your right, but we don't want any violence. If you are to commit violence, if you destroy the public property, you'll have to be responsible for it; you'll have to pay for it."

Ms Frangos: Obviously that's already set out in our laws, right? I don't know what else can be developed.

Mr Morin: Yes. Thank you, Maria.

Ms Frangos: I just wanted to add that you mentioned that I was young. I'm not as young as I look, actually. I'm 26 years old and I used to actually work for the federal government for Citizenship and Immigration Canada. I just wanted to add that I remember when I was reading reports from different countries, countries that we accept refugees from, there was a lot of violence going on there and we'd provide political asylum for these people. I just don't want Ontario to end up like that.

Mr Christopherson: Thank you very much for your presentation, and I agree with Gilles in terms of it's good to see you come forward and feel comfortable enough to express your opinions.

You mentioned that if the microphones and speaker system and podium had been at the front, as it was with previous demonstrations, you think things might have gone differently. Do you think that act alone would have made a big difference at that event or is it just one piece of it?

Ms Frangos: I think it alone would have made a big difference, because I was speaking to a lot of people prior to the barricades going down, and they said, "Why are we so far back?" Because people were going past the speaker, and a lot of people were complaining about that, a lot of people were angry about that. They felt that it was another tactic to keep the people as far away as possible from the Legislature. Then after the barricades went down, I heard that a lot of people were really angry about not having the speaker up at the front. So I think it was a significant factor in what happened that day.

Mr Christopherson: Just on that, Mr Chair, I don't know if we've ever had a chance to pursue how that happened, but I do know that Dave Cooke had raised in the House the fact that for some reason the usual procedure hadn't been followed. Maybe you can help me as to whether or not we've done any work on that, trying to establish that.

The Chair: I don't recall that Mr Cooke pursued that in the committee.

Mr Christopherson: I'd like to raise it again just as something that we did say we wanted to find out if there was a communication problem or procedure problem, but why that happened.

The Chair: We'll try and get you an answer.

Mr Christopherson: Thank you.

The other question I would have for you, and I don't expect you to be an expert in this, I just want your thoughts on it, but let's assume you've got a podium at the front and you're doing everything you can to—you've got a reasonable police presence etc, things are sort of as you might expect as you show up—and I've been to lots of demonstrations before I actually hung out a shingle here myself—once things get out of hand, in a case

where they do, and it's usually a very small group of people who are doing that, what sorts of things do you think the security people here should do?

For instance, let's say that suddenly you've got 15 or 20 people who are banging on the front door and getting themselves more and more worked up. From the point of view of, say, yourself, working as a staff person or a friend or a relative who's on the other side of the door looking at that and then trying to have the balance between the public's right to access, all the things that we're doing here, what do you think would be sort of a reasonable response in a case like that, just off the top of your head?

Ms Frangos: A reasonable response?

Mr Christopherson: Yes, by the security people on the inside as they see people starting to clamour and hammer at the door.

Ms Frangos: You could always lock the door with the chains. If it gets to that point, obviously you want to protect the people who are inside here from that sort of violence, and I think that's acceptable.

I can tell you what I do not find acceptable.

Mr Christopherson: Yes, please.

Ms Frangos: I don't find taking a police baton, if you're a police officer, and just swinging it at people. I don't find that acceptable. If it gets to that point, obviously you want to protect the people who are inside here from that sort of violence, and I think that's acceptable.

1550

I can tell you what I do not find acceptable: I don't find taking a police baton, if you're a police officer, and swinging it at people—I don't find that acceptable.

If you increase the number of security at the front but limit the amount of weapons, so you can have more people but less actual physical force as far as weapons are concerned, I think that might be another way. There are ways to approach a crowd. If you're going to start hitting them, they are going to start fighting back even more. I think there are ways. Or have the person at the podium call back and say: "Can you please step away from the door. This was meant to be a non-violent action," sort of working together as a team, the people putting the demonstration on and even the people in here.

Mr Christopherson: I think that makes a lot of sense, and one of the things we heard from our counterparts in Quebec City was that, as much as possible, the security people out of the Speaker's office try to contact the organizers of the event. I think it would make sense. If you've got the podium at the front and you've got a combination of organizers who are there to take responsibility and security people as a buffer, standing there trying to orchestrate things between the podium and the doors, I suspect that you could go a long way to keeping things calm.

Ms Frangos: Also, I think it would be a good idea if you had marshals from the groups themselves, because I know that when we go on marches or whatever, I'm usually marshalling, and I try to keep the people on the side of the street so they won't block traffic or whatever. I think that if you tell each group to supply 20 or 30 marshals each, you're not going to find you'll have a problem like that.

If you leave a lot of it up to the people who are demonstrating to organize a peaceful demonstration and you don't alienate them by putting up barricades and such, I think you'll find that it will change a lot, that the climate will change considerably in that it will be less violent. In fact, I think you'd be surprised at how less violent they would be.

Mr Christopherson: I agree entirely, and maybe one of the things we need to look at is that there be a stronger protocol internally for attempting to reach out. Now, not every group is going to be as cooperative as we might suggest here, but I think the vast majority would.

Ms Frangos: Oh, for sure.

Mr Christopherson: Maybe that's an area we can look at in our deliberations, to put those procedures in place, that there's an actual checkoff of what will be done, and being sure that kind of outreach is happening.

Thank you again very much for coming forward.

Ms Frangos: I know that one of the organizers, I guess, blamed for what happened on September 27 was John Clarke from the Ontario Coalition Against Poverty. I'd just like to add quickly that he was visited by a police officer a couple of months ago. He was not home at the time; his wife was at the door. He told me the story himself. The police officer basically said that he should "watch out." So I think intimidation tactics like that aren't going to work either. I think the police should be a little less volatile.

Mr Hastings: Maria, thank you for attending today, although your historical perspectives with the French Revolution aren't necessarily that accurate. Do you come here as an individual citizen, I presume, and if so, when you were at the most recent demonstration, were you there as a member of any particular group, university group, or what?

Ms Frangos: I wasn't at the last demonstration, when the students went through. I was at the September 27 one. I came as an individual. I hadn't demonstrated in a long, long time, but I felt that I wanted to exercise my right to.

Mr Hastings: My only question is—you were beaten with a baton last September?

Ms Frangos: Right.

Mr Hastings: Have you approached and made a formal complaint to the Metro police?

Ms Frangos: Right. I have.

Mr Hastings: And has Mr Clarke's wife specifically got the badge number of the officer who attended—

Ms Frangos: I think a badge number was—

Mr Hastings: And was there a complaint laid?

Ms Frangos: I'm not sure. I haven't spoken to John for a while, so I don't know what happened since then. I know what's happening with my complaint, but I couldn't say about what's going on—whether he lodged one or not.

Mr Stewart: As a demonstrator, do you not feel that you have some responsibilities too? It always appears that you're always talking about the other guy, you know, the other guy hit you or the other guy was trying to intimidate you or the other guy instigated it. What about you as a demonstrator, do you not feel that you have any responsibilities for what happened? Unfortunately these days, if you are going to be involved with this type of

rioting, which I believe is what it is, then you have to have some responsibilities too and not totally blame it on the other guy.

Ms Frangos: I'd like to say that, first of all, I wasn't carrying a weapon. When you're removing a person and they're a demonstrator and you perceive them to be acting violently, there's a way to remove them from the situation. I had my back turned when I was hit. I was leaving after I was told to leave. In my case, I was listening to what the officer told me. I didn't get his badge number, I was stunned.

Sure I have a responsibility, and I also think that there is something called excessive force. If I was coming up with a gun and waving it and shooting it around, yes, I would expect to get shot, or if I was coming up to the Legislature with a knife, I would expect to get hit.

Mr Stewart: How do we know you don't have, though? That's the concern. If you were coming to me with 1,000 behind, how do I know that you don't have a knife in your handbag or a gun or whatever? You're a great wave of people coming towards me, what am I supposed to do? Tell me.

Ms Frangos: How about I'm walking down the alley and I see this shadow and a man's walking towards me and I think, I'm a woman, I'm alone, he has a knife. So I pull out a knife, I run up to him and I stab him or something like that. There's no way of knowing. You can't really start shooting at people or hitting them without having proper reason to do so. As far as I know, that's what police are supposed to be trained to do. I don't know whether they are or they're not.

Sure the demonstrators have a certain responsibility and so do the police, but the way I saw the demonstration, it wasn't the demonstrators who had weapons on that day. It was the police who had weapons and used them. Like I said before, I saw the footage and I slowed it down and you could actually see—I mean, like, you'd have to be blind not to see that this was excessive force when you look at the footage. Just to add, I mean a lot of the people targeted were women during that demonstration. A lot of the people hit were women.

Mr O'Toole: Maria, at the beginning of your presentation you were a little bit nervous, and I may not agree with what you say, but I will defend your right to say it. With that in mind, you said at the beginning a couple of things that led to very serious interpretations on my part that I want to clarify.

You really said it's "economic warfare." You said it's wage war. It's "an assault on human rights and we have no recourse." I'm asking you a specific question: Do you approve of the use of violence in any form as a legitimate form of protest?

Ms Frangos: No, I don't. I believe in general strikes, shutting the whole province down until there's no choice for the government but to actually listen. That's what I believe. I believe in general strikes. Like I think that's the best way, the most effective way to demonstrate. Violence isn't going to get anyone anywhere. It's just going to get people landed in jail and there's going to be no one left to demonstrate.

Mr Froese: Thanks for coming. I just want, before I ask you a question, to make sure that there's an under-

standing on your part—and probably if there's one committee that's non-partisan, it's this one on security.

Just so that you understand, it's not the government of the day that is responsible for the security. It doesn't matter if it's the NDP, Liberal or PC. Although I don't agree with some of your comments at the beginning, I understand that there could be frustration with people. The right to demonstrate is there, but it's not the government of the day, it's the Speaker of the House, the OPP and the security force within the building that's responsible for the security. So what happened should not be viewed as it's the government that influenced the forces as you might view it. It's not the government of the day that sanctions or instructs the force that has happened, unfortunately, the last couple of times.

You've alluded to the individuals responsible for their actions. I guess I'd like to further Mr Christopherson's questions. How do we stop the violent action? Can you give us suggestions other than moving the podium to the front on the steps and having maybe marshals? Unfortunately, you don't know, like on September 27, as you said, you came together, everybody came together. There was nobody really in charge of that and so how do you handle a situation like that or what suggestions from a security point of view can you give us to handle maybe some of that stuff?

1600

Ms Frangos: First of all, you said that no matter which government is in, security is sort of separate. Right? Is that what you said?

Mr Froese: Yes.

Ms Frangos: I'm just wondering if the OPP decided to put up barricades or the Metro police decided to put up barricades that day. I mean, like, I don't think it was. Obviously somebody told them how to set up. Mr Harris's government expected a large crowd and they wanted to prepare for that.

Other recommendations that I might have? If you're looking for me to say dress more cops up in riot gear, get more horses out there, I think I'm the wrong person to ask about that. I think the answer that I gave to Mr Christopherson is the one that I'd stick by, I think as the

one that's going to calm down the violence. I mean, I'm serious. I know it sounds crazy, but I really think it's going to calm everything down if you treat people differently than they have been treated at recent demonstrations. Get rid of the barricades. Put all those marshals down. Like we've never had problems when we use marshals. They listen. Like when I tell people to step back, they step back. I don't have a weapon. I'm not an intimidating force. You line up the marshals up at the front of the steps, they're not going to let people go by. People are not going to go past the marshals. They're going to respect the marshals, they're not going to go through.

Mr Froese: So what you're saying is, rather than having the police, have their own marshals right on the front steps.

Ms Frangos: You've got to have some police just in case, right? but just not, you know, as much of a presence.

Mr Dave Boushy (Sarnia): Besides demonstrations, have you ever submitted a brief with ideas to the former government or to us for any of your recommendations, or you don't believe in that?

Ms Frangos: Recommendations concerning the security or through different—

Mr Boushy: About your ideas, recommendations that should be done.

Ms Frangos: No, I haven't actually. I've written letters to the federal government, different departments, but never to the Ontario government; not because I don't want to, I just hadn't got around to it. I guess I just haven't yet.

The Chair: Thank you very much, Ms Frangos, for coming in today and giving us your view of what happened on throne speech day.

I just want to inform committee members that we meet again tomorrow at 10 am and I look forward to that and thank committee members for giving the Chair the latitude to extend the meeting to hear the presentations this afternoon.

This committee's adjourned until tomorrow at 10 am.
The committee adjourned at 1604.

Tuesday 13 February 1996

The committee met at 1008 in room 228.

SECURITY OF THE LEGISLATIVE PRECINCT

The Chair (Mr Ted Arnott): This meeting of the standing committee on the Legislative Assembly I will call to order.

Mr Gilles E. Morin (Carleton East): I wonder if we can do as we did it the last time, just meet in camera with Mr DesRosiers. I feel that it's better. We can ask him pertinent questions, and we would accomplish more.

The Chair: Thank you, Mr Morin. Is there any discussion?

Interjection: I agree with him.

The Chair: Concurrence that we move in camera.

The committee continued in closed session at 1009.

Wednesday 14 February 1996

The committee met at 1018 in room 228.

SECURITY OF THE LEGISLATIVE PRECINCT

The Chair (Mr Ted Arnott): I'd like to call to order this meeting of the standing committee on the Legislative Assembly. We are continuing our discussions on the issue of security in the legislative precinct.

The committee continued in closed session at 1019.

Thursday 15 February 1996

The committee met at 1200 in room 228, following a closed session.

DECORUM IN CHAMBER

The Chair (Mr Ted Arnott): We're back in open session again. I recognize Mr O'Toole.

Mr John O'Toole (Durham East): The standing committee on the Legislative Assembly has deliberated for almost three weeks on security. On several occasions, I have attempted to introduce the issue of order and decorum. Let me remind members of the committee that all three parties agreed to attend to both security and powers of the Speaker as part of the permission of this committee to meet during the intersession; I would refer you to the minutes of December 13 and section 3.9 of the standing orders. In the event and out of respect for the importance of the security issue, I have reluctantly allowed that discussion to take priority, and I think we all worked very effectively. However, the acknowledgement that this issue of Speaker's powers, order and decorum was accepted previously by all three House leaders—we must proceed to make progress. Actually, standing order 15, as it relates to naming members, must be addressed. Standing order 28(c), with respect to members voting, should be amended to allow members to abstain from voting. Furthermore, the Speaker and/or the government House leader may move a motion to ignore a named member.

The intent of these amendments is to allow the business of the House to proceed in an orderly and productive manner. This discussion should not be limited to the above standing orders.

Finally, in order to ensure unanimity on the security issue and final report, I must be assured that the secondary issue must be dealt with as well. In my opinion, these issues are linked. In so far as members' behaviour sets a tone in the House, and subsequently in the government, we should not tolerate disrespect for the Speaker and/or the standing orders.

This is a statement—a motion, if you will—that we would be required to follow up in the next meetings of this committee on the issue of order and decorum and the standing orders.

That recommendation is moved by myself and seconded by Bill Grimmett, if that's required.

The Chair: Mr O'Toole has moved a motion. Is there any discussion?

Mr David Christopherson (Hamilton Centre): I'm not going to get into a long debate, but since the member felt strongly enough to ask that this be put down on the Hansard record, I also want to go on record as stating that as far as we are concerned in our caucus, this whole issue of decorum and wanting to deal with it is nothing more than a cover for some members of the government to deny MPPs their parliamentary rights and privileges because they find it discomfiting to face criticism across the House in a way that way that seems to ruffle their feathers. We feel very strongly that the niceties that the honourable member would like to deal with are merely a desire on his part to muzzle the opposition so that the

government can quietly and conveniently go about its business. We will continue to resist this blatant attempt at shutting down the opposition as strongly as possible, recognizing that if ever there were legitimate issues we would deal with them. I have seen none, and the incidents pointed to refer to two members specifically, Mr Kormos and Mr Curling, and rather than being legitimate enough to deal with those things up front, we have this charade of talking about decorum. I can't express strongly enough how my caucus and I feel about this attempt to shut down an effective opposition in this House.

Mr Rick Bartolucci (Sudbury): Just a quick comment: Certainly I appreciate all three parties and the individuals of all three parties understanding the importance of security. In allowing for some latitude with motions, I moved a motion with regard to the removal of the permanent barriers that was deferred, and I will have that motion deferred for as long as the Chair feels it is important and appropriate for it to be deferred. I have no problem dealing with decorum. I have no problem coming, in open meeting, to agree to disagree, but for an exchange of ideas, I would suggest that I thank Mr O'Toole for his understanding in allowing the latitude in dealing with decorum later on. Certainly we will go back to normal committee work and, I guess, disagree on fundamental privileges.

Mr Frank Miclash (Kenora): Just very quickly, I follow up on what David said in terms of muzzling the opposition. I see this as paralleling the incident in the House and also paralleling what could have led to a drop in the polls. It's almost a parallel to that. As Mr Bartolucci has said, the motion's on the table. We will certainly be discussing it, but you have to realize where we're coming from. Letters to members of the government have been referred to before. I think I indicated the other day to Dave that I could probably come up with just as many opinions and letters indicating that what we did was right. I think we have a strong argument, noting the amendments to that particular piece of legislation, to indicate that the process we went through certainly did bring about change. I'd like to have that on the record.

The Chair: Mr O'Toole, did you want to respond to those comments?

Mr O'Toole: I respect that the record will carry the words of David Christopherson and his party in defiantly challenging that this government is trying to ignore members. That's certainly not the case. I think the House leaders originally decided—and agreed, I might add—to the importance of this issue and that it should have a full, open and honest debate. It's been the intention of all parties here, I believe, to work in harmony. I really appreciate Mr Bartolucci and Mr Miclash, and our friends on the other side have all contributed positively. I'm saying that we have conceded, I believe in our own interests, to the greater good. I think our party and the members here who have diligently attended all of the meetings—and I might add there's been some lack of continuity on the part of some parties to have continuity to see the building of consensus.

Mr Christopherson: Oh, cut the crap.

Mr O'Toole: No, there has been. I just say that we've conceded in the interests of full and honest discussion on

this discussion. But we are all, from time to time, alerted by our constituents, and even I've heard members, from time to time, say in here that they recognize that decorum and order—and you know yourself it's been challenged by Mr Cooke. The Speaker is being required to have the right and privilege to conduct business of the House and Mr Cooke has challenged him several times. That's all we're trying to straighten out, is to allow business to proceed in the interests of the people of Ontario. I respect your right to dissent—to your own ideologies, if you will. We request the right and duty to follow through with the original resolution at our next meeting.

The Chair: If I could just quickly respond to that as Chair, it could be assumed that it is the responsibility of the Chair to lead the discussion in such a way that business is completed in the allotted time, and I would accept that responsibility as Chair. I would also add that it's my understanding that since this issue, your original motion from before Christmas did pass, it is business that's presently before this committee and will be handled in due course, along with other items of business that are before this committee, when we resume sitting on March 18.

I've two additional people who have requested an opportunity to speak. Do you still wish to speak, Mr Stewart?

Mr R. Gary Stewart (Peterborough): Yes. Just a comment: If you look at the explanation note in our standing orders, they were adopted in 1989, they were amended in 1989, they were amended in 1991, they were amended in 1992, and I think it is only accountable for us to look at them again and revisit them as an ongoing issue with this committee. So I support the motion because it has been done in the past and I believe should be done in the future.

Mr John Hastings (Etobicoke-Rexdale): The only point I'd like to make is that if this committee is to function effectively in terms of dealing with matters of decorum or order, or whatever you want to call them, and the House leaders agreed to same and it's in the motion directing us to deal with them, my only observation is that if there is a dissent from that in terms of how it's worded or what the House leaders agreed, then I think it's incumbent on the House leaders to define very precisely and target very specifically what the matters are that they agreed to. Since we agreed to deal with security, we've dealt with it. Now, if "order and decorum" aren't the words that were agreed to in their meeting—I wasn't there; we weren't there—then I would hope that the Chairman will go back and discuss this sort of matter with them—whether it's any other item in the future—what exactly do they agree to have a committee work on. Otherwise, if we can't have an agreement as to what they agreed to, how is this committee to function and get the matter disposed of one way or the other?

1210

Mr Bartolucci: I think what we're looking at here, maybe by way of information and clarification, is that Mr O'Toole is raising this as a point of procedure rather than a motion, because the motion is redundant. The motion is on the table, as you said. It has to be dealt with. So if he's looking for procedure, then in fact that's exactly what we will be doing. As we move into meetings, we

will be dealing with the motion that's on the table, correct?

The Chair: That's my understanding, that the business is before this committee and is an outstanding matter. Now, we had an informal agreement, before we moved back into open session, that we would deal with the security issue first on the 18th. We also have the private member's bill from Dominic Agostino, which may take precedence because it came to our attention first. Is that correct?

Clerk of the Committee (Ms Lisa Freedman): It actually came on December 14.

The Chair: So, in terms of the wording of Mr O'Toole's motion, there may be a slight problem. I think it indicated that we would deal with decorum on the 18th, and unless we sit all afternoon and all night, we may not get to it on the 18th. But as Mr Bartolucci's pointed out, this business is before the committee and certainly as Chair I commit to endeavouring to deal with it, with the concurrence of the members of the committee.

Mr O'Toole: Just a concluding comment: Not to prolong the discussion, and so it's clear in my mind, it has been suggested that since we have mentioned it from time to time then it could be considered as having been dealt with. That does not satisfy, in my mind, our original intention, which was for a substantive examination of at least three of the standing orders. So we're on record clearly that those are the specifics.

The Chair: So is that satisfactory? Do you feel that a vote is required on that?

Mr O'Toole: I feel a vote should be required for the reason that we've named the standing orders we want to amend and basically how we want to amend them.

The Chair: Have you amended your motion, then, relative to the date that we would commence this discussion?

Mr O'Toole: Well, at the next possible date.

The Chair: All in favour of the motion?

Mr Christopherson: Recorded vote.

The Chair: Recorded vote on the motion.

Mr Bartolucci: Then one of the two motions is out of order, Mr Chair. Let's not get into this procedural stuff. Either the original motion is now out of order or the new motion is now out of order. If he wants to deal with the new motion, he must amend the original motion, it's my understanding, procedurally. So why not in fact, once we deal with decorum, we can deal with the three items, just accept this as a point of procedure? The procedure's been clarified. We will be dealing with it and Mr O'Toole can deal with whatever amendment he would like to deal with at that time, or any one of us can.

The Chair: In light of what Mr Bartolucci's indicated, do you choose to withdraw your motion, Mr O'Toole?

Mr O'Toole: I just want to read for your clarification here the original mandate for this sitting during the intersession, that the committee is "authorized to meet during the winter adjournment in accordance with the schedule of meeting dates agreed to by the three party whips and tabled with the Clerk of the assembly to examine and inquire into the following matters....to consider matters related to the security of the legislative precincts and matters related to order and decorum and

the conduct of members and the disciplinary powers of the Speaker." It's dated December 14.

My feeling is that that's all one kind of allotment of time and in my respect it sort of confuses—we're going to come out of it with a report, and there's really no substantive record that we've even talked about decorum and that. It's a point of order, I suspect, in terms of process. Maybe, since we have a record here of discussion, we don't need a resolution.

Mr Christopherson: I just want to make the point that Mr O'Toole obviously feels that there hasn't been enough discussion, but it's clear that we have had discussion on the issue and therefore we're not in violation of the direction to this committee. Mr O'Toole and Mr Hastings, who's shaking his head back and forth, may feel that there wasn't enough discussion and they may feel that there wasn't enough resolution the way they would like to see it—thank God, I might add—but to suggest that somehow we have not fulfilled the mandate in my opinion is not accurate, because we have had discussion. There is no outstanding business that has not been dealt with by virtue of our not adhering to the direction we've been given. At this point it's only a question of degree of discussion and conclusion.

I want to make it very clear, and I don't want to be very provocative in any way, but I want it very clearly understood by the government members and now the public, through this open session, that following the course that Mr O'Toole has talked about on a number of occasions over these last few weeks is, by and large, a declaration of parliamentary war. I see government members rolling their eyes. The fact of the matter is that when you start talking about shutting down the rights of opposition members, you need to appreciate that you are playing with fire. I want to make it very clear that this is not a simple little matter and not a simple little question of a few rule changes so that the government can make things move more efficiently. We in opposition—and you will too when it happens to you—will take those rights and privileges very seriously. They are at the core of what little influence an MPP who doesn't have to sit in the government caucus has. When you attack those, that is taken as an extreme measure and a response will have to be in kind.

So I hope that when Mr O'Toole speaks, it's either as a representative of the government and we should take it as notice that this kind of attack is now under way, or there ought to be some kind of messaging from other members on the committee or House leaders or in some other arena that Mr O'Toole speaks for himself or maybe a few members of caucus but it's not the official govern-

ment line. I urge you to appreciate what this kind of move on your part will have to be interpreted as by opposition members.

The Chair: Again, I would remind committee members of what I said earlier as Chair, committing myself and I think committing the committee—we all know we have this as an item of business before us that will be dealt with in due course. Another relevant point is the need to do it a reasonable way, in a process that gives us some to prepare some briefing notes and the various things that have to be done in order to have an informed discussion. That would be a point that also should be considered.

Mr Hastings: I just simply want to let the record be clear that this matter of order and decorum, or whatever you want to call it, has not been dealt with and the motions that you have referred to clearly indicate that it has not been dealt with. If it had been dealt with, then you would have some recommendations or no recommendations. There may have been some temporary discussion about it, but there hasn't been a full discussion and airing of the item, because if you had treated decorum and order in the same way as you had security, you wouldn't have any recommendations; you would have a report coming out with an analysis of the situation with no change. That's not going to be the situation. Presumably you'd have a report going to the caucuses with some specific recommendations. That is the way you handle an issue. In this instance, it hasn't been handled at all, because there hasn't even been an analysis or a discussion. So it hasn't been treated fully at all.

The Chair: That's quite correct. It still stands, as I understand it, as business before the committee in the future. Are there any other comments relative to this motion?

Mr O'Toole: I'm going to require a—I'm going to request a vote, not require; you can do as you wish. This is not a declaration of war, it's a declaration of discussion, so that the House can conduct the business for the people of Ontario. It's as simple as that. This committee is an all-party committee and in that respect we're very interested in input. We're not definitive on the outcomes, but we are definitive on what we expect to discuss. In that respect, I am asking that the vote be taken, as requested.

Mr Bartolucci: I'd like to ask the clerk, is the motion redundant in fact and is it out of order?

The Chair: It's the Chairman's decision as to whether or not it's in order. The motion is out of order. The meeting is adjourned.

The committee adjourned at 1220.

CONTENTS

Monday 12 February 1996, Tuesday 13 February 1996,
Wednesday 14 February 1996 *and* Thursday 15 February 1996

Security of the legislative precinct	M-87
Legislative Assembly Press Gallery	M-87
Richard Brennan, president	
Jeff Harder, vice-president, print	
Ontario Motor Coach Association	M-92
Wayne Asquith, chairman, travel and tour committee	
Margaret Marland, MPP	M-95
Mark Keilty	M-101
Maria Frangos	M-106
Decorum in chamber	M-111

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

*Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

 Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

 Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Christopherson, David (Hamilton Centre / -Centre ND) for Mr Silipo

Clerk / Greffière: Freedman, Lisa

Staff / Personnel: Sibenik, Peter, procedural research clerk, Office of the Clerk

CA20N
XC20
-L20

Government
Publications



M-12

M-12

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 10 April 1996

Journal des débats (Hansard)

Mercredi 10 avril 1996

Standing committee on the Legislative Assembly

Comité permanent de l'Assemblée législative

Legislative Assembly
Oath of Allegiance Act, 1995

Loi de 1995 sur
le serment d'allégeance
des députés à l'Assemblée législative



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 10 April 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 10 avril 1996

*The committee met at 1534 in room 228.*LEGISLATIVE ASSEMBLY
OATH OF ALLEGIANCE ACT, 1995

LOI DE 1995

SUR LE SERMENT D'ALLÉGEANCE
DES DÉPUTÉS À L'ASSEMBLÉE LÉGISLATIVE

Consideration of Bill 22, An Act to provide for an Oath of Allegiance for the Members of the Legislative Assembly / Projet de loi 22, Loi prévoyant le serment d'allégeance pour les députés à l'Assemblée législative.

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. Members of the committee, we have a report from the subcommittee that we have to deal with first.

"Your subcommittee met on Tuesday, April 2, 1996, and agreed to the following:

"That the committee will consider Bill 22, An Act to provide for an Oath of Allegiance for the Members of the Legislative Assembly, on Wednesday, April 10, 1996."

Do I have a motion to adopt?

Mr Frank Miclash (Kenora): So moved.

The Chair: All in favour of the motion? Those opposed? The motion's carried.

Mr Agostino, welcome to the standing committee on the Legislative Assembly. We look forward to hearing your presentation on the private member's bill that you put forward in this Legislature.

DOMINIC AGOSTINO

Mr Dominic Agostino (Hamilton East): I'm pleased to make a presentation today on a bill that has now received second reading in the Legislature of the province of Ontario and hopefully, with the approval of this committee, can move on to the House for a third and final reading. First of all, I want to thank members of the House on all sides who supported the bill when it came for second reading. Bill 22 was dealt with in the House on December 14, 1995.

I'm pleased to be here and let me reassure all members of the committee that my intent with the introduction of this bill was not to in any way, shape or form take away from the historical significance of the monarchy, of the role that the monarchy plays, has continued to play and hopefully will continue to play for many, many more years to come in the history of this country. I very much believe it is an important part of Canada, it's an important tradition, it's an important heritage we must maintain and pass on to our children and grandchildren.

I was not born in Canada. My parents chose to make Canada a country to raise a family and make a living. I

am pleased they did that, because it has been a tremendous opportunity for all of us. It is an opportunity I know we would not have had in the country of my birth, and I very much respect the institutions and traditions of this country and want to continue to maintain those.

As a country, we have evolved over the years, we have evolved and changed. I think any of us would acknowledge the fact that this is not the Canada of 100 or 125 years ago, the country today made up of many different people of many different backgrounds. All of us come here with a common purpose and a common goal and all of us come here to try to share in the values and beliefs of Canada.

As the country has evolved and as we have changed over the years, our institutions, I believe, must change and must reflect that. We have gone through unity crisis after unity crisis in this country. I believe one of the problems we are facing and we have faced as Canadians over the years is that often we don't speak out loudly enough, clearly enough and focused enough on behalf of Canada. We have over the years been shy to wave a Canadian flag. We've been shy to talk about things that make Canada what I believe is the greatest country in the world.

I think it is has been that reluctance—we as Canadians know the kind of country we live in, the kind of country we have, but we tend to be very quiet about it. You can compare our difference to the United States very clearly. Maybe they take flag-waving and patriotism to an extreme on the other hand, but I think in Canada we don't do enough of that.

I find that most people I've spoken to are shocked at the fact that the oath of office for elected officials does not include a direct oath to Canada. I understand very clearly that there will be those of my friends here today who will say when you're swearing the oath of allegiance to Queen Elizabeth II, you're in effect swearing an oath of allegiance to Canada. That I understand, that I accept.

1540

I would ask my friends: What damage, what danger, what harm do you see to Canada, to our institutions, to our Parliament if we allowed our elected members to swear allegiance to Her Majesty Queen Elizabeth II, of course, first, and to Canada as well, to have the two combined? I don't believe it takes anything away from the heritage, from the monarchy. I think what it does is add: it adds to what we've built upon over the years. It does not take anything away or diminish the role of the monarchy in any way, shape or form. It simply allows us to express one more time, gives us one more opportunity to say "Canada" in an oath of office.

I found it astonishing as an elected official that I could not take my seat here if I chose to swear allegiance to Her Majesty and to Canada at the same time. I think in most countries around the world we would find the same astonishment. Frankly in most countries you could not hold elected office unless you swore allegiance to the country which you served in and you chose to serve in.

Let me remind members of the committee that I very much disagreed with the move of the previous government to remove from the oath of office for police officers the reference to the Queen. As a member of Hamilton city council at that time, I sponsored a resolution and supported it, and we were able to carry a resolution urging the government to reconsider that decision. We very much felt that removing the Queen from the oath of office was the wrong way to go about it and was the start of destroying an institution and a very important part of Canada, Canadian history and everything we stand for as part of the Commonwealth.

I'm very supportive of the monarchy and I've very supportive of the move of this government when they changed that to give police officers that option and that choice. At that time I sent a note over to the Solicitor General congratulating him for the move. I felt it was the right move and felt that is the way to go. So there already is a precedent. This government in a sense already has done that and has accepted the precedents of both the oath to the monarchy, to Queen Elizabeth II, and the oath to Canada, and that has been done as a result of the change that was made to the oath for police officers to take.

I'm pleased also that both the Premier and Mr Runciman have publicly supported a change to the oath of office, Premier Harris in an article on July 1 in the *Toronto Sun* and Mr Runciman in an interview with Roy Green, and I'll just read from that.

The interview was based on the change to the police oath, and the question was: "Bob, would I then by extension assume that you'll be in favour of Dominic Agostino's motion/bill to include Canada in the oath of allegiance for provincial politicians?"

The response from Mr Runciman was: "Yes, I am. I think that's appropriate, and I indicated to Dominic yesterday"—in the House—"that I was. He sent me over a note in the Legislature congratulating me on the statement I made in reaction to the government and asking how I felt about his resolution, and I said he's got my support." That is from the Solicitor General, Mr Runciman.

I don't want to belabour the point. I don't want to go too long. I've given speeches in the House on it. My track record on this is clear. My historical support of both the monarchy and of including Canada in the oath is very clear. I had the opportunity and the pleasure to be pretty well the first elected official at the municipal level to be able to do it and was allowed to take that oath of office. In Hamilton-Wentworth it has been followed by the regional council and the city council, following that in 1994, also swore an oath of allegiance to both the Queen and Canada. I hope we will approve this motion today and allow it to go forward, and we will become the first Legislature in this country to require elected officials to swear both.

Let me just remind you, there's one other Legislature that does it, and I believe for the wrong reasons. The Constitution allows provincial legislatures to add to the oath of allegiance as long as the first one is not touched. The oath as prescribed in the Constitution we do not have the power to touch or tamper with, but we have the power to have a second oath. In Quebec they have a second oath, an oath to the province of Quebec. They're the only other Legislature.

Let us be the first Legislature to not only respect, understand and support the role of the monarchy but also put a second oath in, with the second oath to Canada, and that will be the first for this country. It will be historic for this Parliament, and I hope I can have the support of the committee members for what is really a non-partisan issue. We have the support of the Premier, we have the support of the Solicitor General, and I hope we have the support of the committee today. I'll be happy to answer any questions.

The Chair: Are there any questions for Mr Agostino with regard to his presentation?

Mr John O'Toole (Durham East): The first question I have is, what's the problem with the current one? I haven't heard of it being a problem until last fall after the election. Mr Agostino had a photo opportunity and he had some difficulty with the long-serving traditions of this province. I don't know whether it was a photo op, a personal leadership opportunity, and I'm wondering what the problem is. That's really what it is.

Mr Agostino: If I can answer that, first of all, I will make this non-partisan. I don't plan on taking shots at the committee members today. The question of the oath to Canada is not a new controversy. My friend will remember the uproar that occurred in this province in 1991 when there was an attempt to change the oath in regard to police officers. It has been discussed at the federal level and private members' bills have been introduced at the federal level a number of times to change this oath. I took the same stand on Hamilton city council and was successful in convincing my colleagues to add "Canada" to our oath. We did it and were not challenged on it.

I very much believe that as an evolution of the country, the oath as it now stands is a good one. Our historical ties to the monarchy should not be diminished and should not be swept away. What I'm asking is simply to add the word "Canada" to the oath that we now have without taking away, in any way, shape or form, the initial oath, the one that has been place since 1867. We have evolved. We have changed the country. We have gone through a number of crises, as I said earlier, on national unity, and I think one of the reasons is because as Canadians we haven't done enough like the rallies in Montreal, we haven't done enough flag-waving. We haven't spoken out loudly and clearly enough about how much we love this country, what this country means to us.

I really think there is something wrong when an elected official cannot swear allegiance to Canada as well as to Her Majesty the Queen, simply say the words "and to Canada" or a second oath that says "to Canada." I do not, for the life of me, understand how one believes it's going to take away from what we now have. I believe it

will add to what we have and it'll make us even prouder to be Canadians.

The Chair: I'm going to go in rotation among the parties.

Mr Rick Bartolucci (Sudbury): On a point of order, Mr Chair: I refrained from interjecting after Mr O'Toole finished, because I wanted Mr Agostino to give his answer, but I honestly believe Mr O'Toole was out of order with his comment.

The Chair: In what way?

Mr Bartolucci: I believe he imputed motive with regard to the reason and the rationale behind the action Mr Agostino took at his swearing in. I believe Mr Agostino deserves the right to qualify his actions, although they weren't necessary as far as I'm concerned. I would ask, Chair, that you rule that comment with regard to the photo op out of order, because indeed it was and is still an out-of-order comment.

The Chair: I would like Mr O'Toole to have an opportunity to respond to that before I rule, if he's interested in doing so.

Mr O'Toole: I'll explain: When I was sworn in, it was a very important occasion, a very personal occasion, and I didn't invite the press. I'm wondering if the Toronto Star just happened to be walking by. How much of it was opportunistic and how much was a personal, conscious, quiet decision? I mean that sincerely. The papers were not just walking by. If it's a personal choice, I completely support the sentiment, the secondary sentiment here, of being about to enunciate certain loyalties over and above the oath that's prescribed today. I don't have a problem with it. I think that is a personal conscience thing. That part of it I certainly recognize.

The Chair: As members of this committee know, it is against the rules and the traditions of the House to impute motive in the chamber and the committees. I would ask all members to observe that.

Mr O'Toole: I'll withdraw, if I'm imputing a motive out of context.

The Chair: Thank you very much. I recognize Mr Miclash.

Mr Frank Miclash (Kenora): As Mr Agostino has indicated, he has certainly received a lot of support for this motion. He indicated in his comments that he has the support of the Solicitor General and the Premier. As you know, it had the support of the House as well when he presented it as a private member's resolution. I think when we as a committee take a close look at what we're going to do in terms of this act, we should respect that support that he has gathered from the Premier and the Solicitor General, along with the majority of the House.

1550

Mr Tony Martin (Sault Ste Marie): I'd like to go on record on behalf of myself and my colleagues in support of this bill. I think it's a timely one and one we should all be willing to give some serious consideration to and actually listen intently, as I have, to our constituents re their feelings, their sentiments, their sense of whether at this point in our history we are, as a provincial jurisdiction and as a country, willing to stand up and operate on our own two feet and become more and more identified with Canada as opposed to some historical roots that still

remain important and will be forever there as an important part of our heritage. I think it's time we recognize and begin to give some respect to the fact that we are an independent country with all of the infrastructure that goes with that; I think it only right that we would.

Mr Agostino, in this bill, has tried to be as sensitive as possible to those who still feel quite strongly, although I suggest to you that if you listen to your constituents out there and have spent any time in conversation about this kind of thing—and some of you may have, because as Mr Agostino said in his remarks, we've been through in the last number of years, and most dramatically in the last half a year, some very critical time in our history as a country, as a people who pledge allegiance to one another, to our past and, most importantly, to our future together. In light of that, it becomes probably even doubly important, critically important that we, in every way we can, show that we are proud to be Canadians and that being Canadian means something both formally and informally in the communities we live in, in the jurisdictions we govern in and within the borders that are this great country of Canada that goes, as I think we should say more often because it's true and it's quite unique for a country, from sea to sea to sea.

I personally see this as a step forward. I think we'll find ourselves going down this road even farther as time unfolds, and as the discussion on who we are as a country, the makeup of that country, the way we govern ourselves in this country continues, we will probably at some point go even beyond the bill that we have in front of us now presented by Mr Agostino in this House.

He's done it in a fairly public way. I have no difficulty with that. I've been here for six years and there isn't too much that I do down here that I don't do in some very public way, particularly to let the people who have voted for me back home know that I'm here, that I'm acting on their behalf, that I'm taking seriously the responsibility given to me at election time and that I'm bringing forward some of the thoughts and ideas and really strong sentiments of my constituents. They should know about that.

Every time I get up in the Legislature to make a statement, to ask a question, to respond to a minister or give a speech, the second thing I do—and I'm not apologetic about this—is I call my community. I call the press. I call some of the leadership. I call anybody in the community who might have an interest in the particular subject or topic that I'm speaking on, and they listen. They have an opportunity to encourage me or praise me, or to criticize me or to challenge me, or to want to sit down with me when I come back home and have a further discussion so that I might clarify more fully the position I'm taking and why I'm doing it. It's fundamental to the institution that we all serve, that we're all part of. If we should in any way suggest that's not correct or proper, I think we should be questioning that as well.

I came to Canada, my new home, in 1960, the eldest of seven children born in Ireland. I had, when I came, no preconceived notions about the connection Canada might have with that dear country close to the country I came from, England, and its ruling authority, and became a very active and proud Canadian. It was only five years,

almost to the day, after we arrived, Mom and Dad and my five sisters and my brother, that we marched almost in lockstep down the main drag of Wawa, where we lived, to pledge allegiance to this new country that became our home.

I now am married to a woman of Italian descent. Her mother came to Canada from Italy as a teenager to look for work. Her father's parents came to Canada as a young couple to work at Algoma Steel. All of them have claimed Canada as their home. We don't, I suggest to you, along with my four children, who are proud to be Canadian, spend a whole lot of time around our supper table talking about the monarchy or our sense that the monarchy is really all that meaningful any more in any direct or indirect way in our life. Not that I would suggest for a second that my kids in any way diminish the importance of the monarchy to the history of this country, to some of the traditions that we continue to have and work through as we govern each other and make laws and act respectfully in that effort. I don't think this bill takes away in any significant way from that recognition either.

It's important we remember we are a country founded on, as they say, two nations, but with a third nation we have to recognize and make room for. Mind you, they made room for us in the early days of our arrival, and I think it's important that today we do everything we can in our jurisdiction to make sure we make room for them as they make efforts to be all they have the potential to be and to contribute and to live fully in the way our first nations people choose to live in this country.

This is in one respect a rather simple bill we're being asked to consider here today, but in many other respects it's fairly complicated and sophisticated, because of the long history that we have and the uncoupling that is going on now and the struggle, that we're going through as a people together to try and define who we are. I think it's really important.

As I said in my opening few comments, Mr Agostino is being very sensitive and very careful and considered in his presentation of this bill. He's not saying that we totally remove the oath to Her Majesty; he's saying that we simply add another piece. As we pledge to be faithful and to do the best we can in this job and the work we entertain here, in this instance, continue to recognize the important place the Queen has played and the monarchy has played and our British ancestry, which is part of our heritage here in Canada, has played in our being where we are today and the fact we can consider some of the things we consider in such a peaceful, democratic manner as we evolve as a country, and add to that simply a statement of our allegiance to the country we all claim as our own.

I'll be supporting this bill on behalf of my colleagues in the New Democratic caucus and I would hope that all of you across the way will, in the spirit that I know you come here with and in looking ahead at this wonderful country of ours as it evolves, find it within your willingness to support it as well.

1600

Mr Derwyn Shea (High Park-Swansea): Chairman, I must confess, something happened. This may be a point

of order, before I begin. I was so enamoured by the points being raised by Mr Agostino and then taken with great pleasure to listen to my good friend the member for Sault Ste Marie—and I always like to listen to him—unfortunately what happened is that I looked down to go through my notes—I'm subbing on the committee today and I apologize—trying to get up to speed very quickly. As I looked down, suddenly the voice had gone from Mr Agostino over to my good friend from Sault Ste Marie and I didn't get a chance to ask Mr Agostino questions. So I'm in your hands. Can we at some point ask Mr Agostino to go back on the list so I might at least have the opportunity to ask him a couple of questions?

The Chair: If you wish to ask him a question at this time, by all means.

Mr Shea: If that's in order, I'd be pleased to do that. I appreciate that courtesy. I'd like to come back to Mr Martin as well, because he piqued my curiosity on a couple of points. I will warn him now I'll come back to his Italian connection and his Irish roots; we won't let that one go without some discussion.

Mr Agostino, could I just ask you for a moment—my good friend Mr Morin will forgive me; oh, he's appeared, so he really will have to forgive me. I can now say it. For others who are very fluent in the beautiful language of French, you'll excuse me if I say, "L'État est moi." I assume that you do not accept the reality of that statement or you see there's some separation of those words.

Mr Agostino: You'll have to excuse me. Unfortunately, I don't speak French and I don't understand.

Mr Shea: I apologize. It's a historical statement made by Louis XIV, essentially saying, "I am the state." I'm wondering if that is something with which you disagree now in terms of the constitutional role of the Canadian monarch. Do I assume you do not agree that the Canadian monarch is the state?

Mr Agostino: I agree with the constitutional role. I agree with the evolution over the years that has occurred. I've said very clearly in my statements that I've very much supported it in my history and my track record of supporting the monarchy and the heritage and the beautiful history of this country and the significant role that the monarchy has played and continues to play in Canada and Canadian history. It's part of our lives and I very much support that role. I would never advocate the abolition of that role. I would never advocate the removal of that role. This oath doesn't do that.

What I think is important for us and for our kids and for our grandchildren is to be able to say in some small way that Canada and the word "Canada" and what that really stands for for all of us as a country are also very important and that we shouldn't be afraid, embarrassed or shy about it. I think they are going to change the oath federally to add "Canada." I made it clear when M^{me} Robillard had initially made the comment that she wanted to remove the reference to Her Majesty from the oath; I spoke out against my federal cousins in Ottawa, and I said at that point as well that I didn't agree with that and that the reference to Her Majesty should not be removed but that we should add "Canada" as well. It's the same position I take here. I really see it, I honestly and sincerely see it as an enhancement of what we have. I don't see

it as a diminishment and I would never ever want to minimize the role of the monarchy and the history it has played in this country.

Mr Shea: I want to make it very clear that I don't take it from your comment that you do. I think you're trying to be very clear about that. But I'm perplexed by it, so I need to explore it a bit more. When you look at the flag of Canada and you look at the Queen, perhaps out of two eyes at the same time, do you see something different?

Mr Agostino: I see the two as symbolizing the same. I see the Queen representing Canada. I see the flag being as well a very visible representation of our country.

Mr Shea: There was an interesting comment. Let me just ask: Are you generally in agreement with Mr Robertson's submission to the committee?

Mr Agostino: Which submission is that? I'm sorry.

Mr Shea: Mr Robertson is the researcher who has provided the details—

Mr Agostino: Oh, the background.

Mr Shea: Do you generally agree with the documentation that is provided?

Mr Agostino: I received this documentation about an hour or an hour and a half ago.

Mr Shea: I confess you're ahead of me by about an hour and 25 minutes.

Mr Agostino: I flipped through it. I understand the history of it. I have read the history of the oath. I understand very clearly that we cannot change the federal; the oath is to the Constitution and it would take an act of the federal Parliament to change that.

Mr Shea: Is there anything in this submission with which you would disagree?

Mr Agostino: I have not looked at it in the sort of detail that I would be able to comment on that at this point.

Mr Shea: Obviously some of the background material ought to figure into some of our discussion in the committee then. Clearly we should have time to review this. I don't know how the Chairman wants to guide us, whether there's a chance to continue this debate for one more meeting, but clearly it's important for people to digest some of this research. Mr Robertson presents some very interesting arguments.

Mr Agostino: can you for my edification advise me, because clearly this is a matter of great importance to you and you've done some research, on the swearing of oaths. For example, let me just pick on four countries—set aside Canada—France, Germany, Italy and the USA. Have you a sense of how the oath of allegiance is taken in each of those countries?

Mr Agostino: I am not aware of the wording for each country, I don't know exactly what they say, but I'm pretty sure that in the United States of America you swear allegiance to the United States.

Mr Shea: To the United States. I see.

The final question would involve the motto of the province of Ontario. To whom does that motto refer, in your opinion?

Mr Agostino: It kind of refers to all Ontarians.

Mr Shea: In what way? Could you explain?

Mr Agostino: In a sense, when you are referring to the motto of the province, anything that we do here—

Mr Shea: To whom does the motto refer?

Mr Agostino: I'm sorry. I don't quite understand if I wasn't starting to answer the question. To whom does it refer?

Mr Shea: Yes, to whom does the motto of this province refer?

Mr Agostino: I'm sorry. To whom it refers? Oh, you're referring to the actual motto itself?

Mr Shea: Yes. To whom is it referring in terms of its loyalty?

Mr Agostino: I presume it would be to Her Majesty Queen Elizabeth II and, through extension, to the country and to the province.

Mr Shea: So to its sovereign?

Mr Agostino: Yes.

Mr Shea: I don't have any other questions. I thank you, Mr Chairman. I would like to talk, when the time comes, with my good friend from Sault Ste Marie.

Mr Bartolucci: My comments will be rather brief. What we have here is someone trying to make an oath of allegiance a lot more meaningful to Ontarians, to Canadians. Ultimately, what I see here is a correlation where we're bringing not only Ontario, not only Canada and not only the monarchy in isolation, but we're trying to bring them together so that when we swear the oath of allegiance, we will have more respect for the allegiance to the Queen, because it will be tied in with Canada.

If you look at it from a student's point of view, you can find out that what would happen with that is there would be a far greater appreciation during history classes or during civics classes of trying to draw in the importance of tying in Canada with the monarchy so that the Governor General, whose position as the Queen's representative is extremely important in Canada but oftentimes goes unnoticed, would be tied in.

What we have here is a bringing together of allegiance, of importance, so that everyone understands clearly that when we swear allegiance to the Queen, we include Canada in that. Ontarians can take a lead here. This is not a dramatic change. This is not a slight to the monarchy in any way; at least I don't read it and don't see it as that. What I see it as is a strengthening of our very, very strong loyalty to the monarchy, our allegiance to the monarchy, through Canada, through our oath. I see this as being very, very good and making it much stronger in importance and in meaning, and that's why I'll be supporting it.

1610

Mr R. Gary Stewart (Peterborough): I have a couple of questions. You made a comment that Quebec did it a different way. Can you tell me what that is? Is there one? Maybe it's already in here and I haven't found it.

Mr Agostino: Simply, they have to, by constitutional legislation, swear the prescribed oath of allegiance that's in the Constitution. Then they've added a second oath which, in effect, swears allegiance to the province of Quebec. It's not something I would support.

Mr Stewart: It's the second oath that they do.

Mr Agostino: Yes.

Mr Stewart: And what you're suggesting in this one is all one oath.

Mr Agostino: No, no, it would be second. Legally, we cannot tamper in any way, shape or form with the first one. We only have the ability to change the second

portion or to add a second one. That's what the bill in effect has done. It has kept the first one identical, as prescribed in the Constitution.

Mr Stewart: You're saying it can't be changed, the first part?

Mr Agostino: It would be through the federal government to change the actual original oath as prescribed in the Constitution. It would take a constitutional amendment. I'm not sure what sort of process it would take and I certainly would not encourage the federal government to change that oath.

Mr Stewart: I won't say what I was going to say. Okay, that's fine. Just a comment that I would make—and I'm not going to get very long-winded—my family has been in this great country for seven generations and I can assure you I'm a very dedicated and a diehard Canadian. I'll ask you this: In the allegiance that you're proposing, is your thought still that we are going to swear allegiance to the Queen first or are we going to swear allegiance to Canada first?

Mr Agostino: Exactly as outlined in the bill, it would be allegiance to the Queen first. You would finish that oath and then swear a second one to Canada following that.

Mr Stewart: Then I would like it on record, sir, that I think you should be reversing it.

Mr Agostino: We can't, though. Let me just explain to you: Legally, we have absolutely no power to change that.

Mr Stewart: I appreciate that. But then tell me this: You're saying to me then that you must swear allegiance to the Queen first.

Mr Agostino: Absolutely, yes. That's under the federal Constitution.

Mr Stewart: Then I think we should look at the whole bill, personally.

Mr Steve Gilchrist (Scarborough East): I'm going to disagree with Mr Stewart.

Mr Stewart: Lots of people do.

Mr Gilchrist: Interestingly enough, my reasons for disagreeing are much the same. The same rationale he provides for his argument I would provide in the alternative. I'm not going to get caught up in any kind of debate about what makes for a better Canadian. I'll just simply put on the record that as somebody who was raised in this constitutional monarchy, I am immensely proud of my British heritage. I don't say that in terms of any one group of people having an extra close affiliation with the Queen, but by the same token I will stand very resolute against any diminution or any attempt to revise history.

We are a country that was founded by two linguistic groups, two nationalities. One prevailed and it is the one that provided the form of government we have today. Constitutional monarchy is very much the creation, at least in its current format around the world, of the British. Starting from that assumption and given the fact that it is entrenched in the federal Constitution, I appreciate the motives behind your bill, Mr Agostino, but I have a great difficulty supporting something that in and of itself presupposes or tries to circumvent what is the legal requirement of an act that we don't have the power to change. We might as well try to do something to revise the laws of gravity. We'll have about equal effect.

I note your reference, or the reference adduced by Mr Stewart which you then spoke to, that in the National Assembly—a misnomer if there ever was one—in the province of Quebec, their oath or solemn affirmation does not talk about Canada. Their supplementary oath, and it is supplementary, swears that they will be loyal to the people of Quebec and they will perform the duties of a member honestly and justly in conformity with the Constitution of Quebec, another interesting turn of phrase.

I guess if your bill was to be asking us if we, having already sworn our allegiance to the Queen, standing as the representative for everything that Canada is, as our ultimate lawgiver—if you were asking, supplementary to that, whether I as an individual was prepared to swear that I would abide by my specific responsibilities in this Legislature, I would be quite sympathetic to that. But I can't support anything that replaces the Queen, and unless you've made a revision to the bill that's been handed out as part of the packet here, there is no mention of the Queen any more.

Mr Agostino: I am sorry. If I can interrupt, that may be the wrong packaging, because the bill itself clearly has reference to—

Mr Gilchrist: This was which tab?

Mr Agostino: The bill is in your package, Bill 22.

Mr Gilchrist: This is what was handed out to me here today.

Mr Agostino: Just for clarification, Mr Chair, just to explain: The oath itself, we cannot touch the first one, so therefore it is not part of this. This is in addition to, and that is why it is not referred to in Bill 22. That was the way legally it was drawn up by people in the legislative end. My request was to have both of them outlined in the bill, but since it is not affecting or touching the first one and we have no power to do so, it is not part of this bill. So this is clearly a supplementary to the oath that we now take, and that cannot be changed in any way, shape or form. That will always be there unless the federal government changed the Constitution.

The Chair: I'd just like ask the researcher to clarify this for the Chair's benefit.

Mr Peter Sibenik: The oath that members currently swear or affirm was originally in place in 1867 as part of the Constitution Act of 1867, which was not a federal statute; it was an imperial statute passed by Westminster. The current bill of course is a bill that is currently before the Legislative Assembly. It is completely separate from the other oath, so they stand in a sense side by side.

Mr Gilchrist: I understand that, and thank you for that attempt at clarification, but—and it's a big but—you use the word "clearly" this is thus and so. I would submit to you that it is anything but clear. It makes no reference to the other legally required oath. Again, we're asking people at large, not people who will have had the opportunity here today to hear you at first hand. So whether it's some minor fine-tuning that needs to be done to the wording of your clause, it really has to say that this is supplementary to the existing oath.

Secondly, I can't support something that puts the word "Canada" in there, because the Queen is Canada. There is no if, and or but about it; she is the embodiment of our country. You cited other symbols such as the flag, but in

terms of what we do in this House, the Queen is the ultimate lawgiver, and we are swearing to abide by her laws, or her heir's at such time as that changes to another king or queen. But by putting the word "Canada" in there, you are at best duplicating what we've already sworn to do, and at worst you're undermining the importance of swearing allegiance to the Queen.

I would be totally sympathetic if your bill was amended to put the word "Ontario" and refer to Ontario statutes and to be in effect some kind of explicit undertaking by a prospective member that we were going to comport ourselves properly in this chamber. But I'm sorry; as it's written here now, I don't think I'll be able to support that.

I look forward to hearing the submissions from the Monarchist League, and if they don't have a problem, then maybe I'll soften my stance. But, Mr Agostino, I don't think I could say strongly enough that I really believe anything we do to diminish the appearance of the pre-eminence of the Queen is in fact a slight and something I don't think it would be appropriate for me to support.

The Chair: Mr Agostino, do you care to respond to that?

Mr Agostino: Yes, just briefly. I'm having a bit of a difficult time understanding what is wrong with reinforcing or repeating Canada more directly. I always thought it was good to reinforce and repeat and pass on how proud we are of Canada, so I have a difficult time understanding what would be damaging in saying "Canada" indirectly the first time, for the first oath that we take, and then saying "Canada" directly through a second oath that we take. I always thought repetition was good and it was always done in school that you learned things by repeating them. I certainly don't understand what would be damaging to this country.

1620

I also want to remind that the decision made by the cabinet and by Mr Runciman in a sense gave people those two options, and I certainly did not hear Mr Gilchrist speak out against that decision made by the government, which I believe was an appropriate decision and a right decision and one that I supported and spoke out publicly in favour of, which in a sense has done what this bill will do.

The Chair: Mr Shea, you had an additional comment?

Mr Shea: I just want ask the question of research, because I don't want to miss that opportunity, but I gather that if this—I'd rather pass and I'll come back and ask Mr Martin some questions when my time comes up.

The Chair: Any further questions of Mr Agostino from committee members?

Mr Shea: I want to go back to the imperial issue, but I'll deal with that later.

MONARCHIST LEAGUE OF CANADA

The Chair: We have representatives of the Monarchist League of Canada with us today, and I would invite their spokesmen to come forward and make their presentation to committee members at this time. Welcome to the standing committee on the Legislative Assembly. Please identify yourselves for the purposes of Hansard.

Mr Garry Toffoli: I should begin by introducing the two of us so you know, when you come to questions after, which is which. My name is Garry Toffoli. I'm the Ontario chairman of the Monarchist League. My college is Dr Richard Toporoski, who is the past chairman of the Toronto branch of the league and has done considerable work for us on the question and the history of oaths of allegiance in the Canadian and the Commonwealth tradition, which is why we asked him to be with us in this presentation today.

I gave the clerk a copy of our presentation which I believe has been distributed. I'd like to make it as an oral presentation but with the copies you'll have to refer to when and if you have questions you wish to put to us.

Mr Chairman, honourable members of the standing committee on the Legislative Assembly, on behalf of the Ontario members of the Monarchist League of Canada, I would like to thank the committee for this opportunity to appear before it as it considers Bill 22, which would establish a second, compulsory oath of allegiance for members of the Legislative Assembly of Ontario.

In introducing his private member's Bill 22, Mr Dominic Agostino stated that it was not his intent to attack the monarchical character of Canada; it was his intent to promote national unity and Canadian patriotism. The Monarchist League of Canada is aware of the support Mr Agostino demonstrated for the Canadian monarchy when he was a councillor in the city of Hamilton and therefore accepts in good faith this explanation of his purposes.

By the same token, however, to oppose his bill is not to oppose patriotism. To vote against it is not to vote against Canada. Those of us who oppose the bill love Canada as much as Mr Agostino does and care as deeply for national unity. While other organizations may have done as much, no organization in Canada has done more for national unity, within the resources that we have at our disposal, than has the Monarchist League of Canada, which has members in every province and territory, from both language groups and from virtually every ethnic community. I might add that native-born Canadians and immigrants to Canada belong to the league, and we have members from each of your political parties.

It is because we love Canada and support national unity that we oppose this bill. We oppose it because it is a bad bill that will not do the good Mr Agostino maintains it will do but will have numerous negative effects. We ask this committee to reject it for these reasons.

One point must be made very clear at the outset and it is crucial to the debate. The current oath of allegiance taken by members of the Legislative Assembly is already an oath to the national state of Canada and, I might add, to the provincial state of Ontario. The Queen is the legal embodiment of the state at both the national and the provincial levels. There is no other legal embodiment. That is why the oath is taken to the Queen. It is not taken because she is an admirable person in her own right or because it is a nice tradition to maintain. It is taken to the Queen because she is our sovereign and it is the role of the Queen, recognized by the constitutional law of Canada, to embody the state. Some may not like this fact, but it is not a matter of personal opinion and it cannot be changed by the Legislative Assembly of Ontario.

The CBC is owned by the Queen in right of Canada. GO Transit is owned by the Queen in right of Ontario. Accused persons are tried in court on behalf of the Queen. Provincial contracts are made in the name of the Queen. It is the Canadian way of expressing our existence as a community and it is distinctive to Canada in a North America dominated by the American republic and the Americans' way of expressing their identity. This bill flies in the face of 500 years of Canadian practice, and one does not promote Canada by dismissing Canadian practice.

If the purpose of Bill 22 is to provide allegiance to the Canadian state, it is an unnecessary bill, because that allegiance is already embraced by the present oath. The Queen is the state. If members truly believe, as they say, that they do not wish to challenge our monarchical institutions, then they cannot support legislation that challenges the Queen's role as the legal embodiment of Canada and Ontario.

It must also be noted at this time that, with all due respect for Mr Agostino, the purpose of the MPPs' oath of allegiance is not to promote national unity or love of country, as important as national unity may be and as strong as our love of country may be. The purpose of the oath is to ensure that the members of the Legislative Assembly are faithful and loyal to Her Majesty the Queen. This commitment protects the people of Ontario by tying the members to the Queen's coronation oath. At her coronation, the Queen took an oath to "cause law and justice, in mercy, to be executed" and to govern the people of Canada "according to their laws and customs." Her Majesty legislates by and with the advice and consent of the Legislative Assembly of Ontario. By swearing to be faithful and bear true allegiance to the Queen as legislators, you are therefore bound by the oath that you are taking to act in accordance with the Queen's promise to the people of Canada.

It is also important to remember that the oaths are reciprocal. The Queen takes an oath to Canadians, and Canadians swear allegiance to the Queen. Except through the person of the Queen, Canada cannot take an oath to Canadians in return. It doesn't exist in the sense that it can take an oath. It is fundamental to our tradition of law and freedom that the commitments made by the people are reciprocated by the state. Reciprocal oaths are essential to our Canadian concept of government. Bill 22 proposes an oath that cannot be reciprocal and therefore it is unacceptable.

Then there is the question of national unity. Even if Mr Agostino were justified in claiming that the purpose of the oath of allegiance is to promote national unity, his bill does not fulfil its stated purpose of doing so. The current oath, as an added benefit, does support national unity because all senators, MPs, MPPs, MNAs, MHAs and MLAs in Canada take the same oath. There is no difference from Newfoundland to British Columbia. Mr Agostino would give us a crazy-quilt system with each province having its own second oath.

1630

While there are grievances across the country, it is only in Quebec the unity of the country itself is at issue. No one doubts that Ontario's MPPs are committed to

national unity. But Quebec will never adopt this new oath of loyalty to Canada, even under a non-separatist government, so Mr Agostino's bill would only result in legislators outside of Quebec proclaiming loyalty to Canada and those inside Quebec not proclaiming such loyalty.

The Parti québécois government removed the national flag from the Quebec National Assembly when it took office in the 1970s, but the Liberal government did not restore it when it returned to office in the 1980s.

This bill would foster and highlight disunity, not unity. If the Ontario Parliament wishes to promote unity, it should direct its energies to reaffirming, explaining and promoting the current oath of allegiance to the Queen, which all legislators, including those in Quebec, must take.

Mr Richard Toporoski: Mr Agostino also maintains that his bill is not meant to attack the monarchy, but there is a great gap between intent and effect. The bill would hurt the monarchy because it would diminish the role of the Queen. It presumes that the Queen is not the legal embodiment of Canada and thus diminishes the significance of Her Majesty.

It attempts to create a dichotomy between Queen and country, which does not now exist. This is also unacceptable. The monarchy is not an add-on to Canada; it is the constitutional basis of the country. The Queen is not just an admirable woman; she is the face of Canada.

Finally, what does loyalty to Canada mean separate from loyalty to Canada embodied in the Queen? Does it mean loyalty to Canada in its entirety, to all its people and ideologies? That is the most obvious meaning. But no one can say that he or she is loyal to all that is Canada and no one should be asked to say that or to be that.

Are the New Democrats and Liberals on this committee loyal to the Conservatives' policies and vice versa? Of course not. But that is what loyalty to Canada in its entirety would mean, because conservatism, liberalism and socialism are all part of Canada, and Canada includes much that is not even worthy of loyalty.

In addition to being the home of undoubted virtues, there is racism, crime, poverty in Canada. There are bigots and criminals among our fellow Canadians as well as honest and generous people. Canada includes all that makes up the country: good, bad and indifferent. To deny that is to deny obvious truth.

Supporters of this bill will argue perhaps that that's a silly statement. They may say that we are not loyal to what we recognize as bad, rather we are loyal to what we consider good in Canada, but that means we are not loyal to Canada as it really exists but only to our own subjective view and definition of "Canada."

In other words, we are really being loyal to ourselves as individuals, and once you start qualifying the definition of "Canada" by excluding those things and people that exist here but which you reject, you start down the slippery yet inevitable slope of classifying those who hold different views as not really being part of Canada. You start on the path to a committee on un-Canadian activities, a path which our equally well-meaning American neighbours travelled with disastrous results.

What does that leave? Is it not that when we say we are loyal to Canada, we mean we are loyal to the politi-

cally impartial Canadian state which must serve us all? That is a proper loyalty, and that is what the Fathers of Confederation understood when they established the oath of allegiance in 1867, and what generations of Ontario parliamentarians have understood in maintaining it.

The state, as such, holds no political views and can embrace us all. In Ontario in the past decade, it has had a Liberal, a Socialist and now a Conservative outlook, but it is the same state. That brings us back to where we started. We have an oath of loyalty to the Canadian state, and Canadian constitutional law defines the state as the Queen.

Mr Toffoli: There are also many questions concerning Bill 22's constitutional validity. These need to be fully investigated. Mr Agostino and others correctly noted during the debate on second reading that the current oath of allegiance cannot be changed by the Legislature of Ontario. Some MPPs incorrectly stated, however, that it was up to the Parliament of Canada to change the oath. In fact, the oath is part of the Constitution of Canada, provided by section 128 and schedule 5 of the Constitution Act, 1867. It can only be changed by amending the Constitution. That would require the support of the Senate, the House of Commons and at least seven provinces. Under the recent decision by the House of Commons, any amendments to the Constitution require virtual unanimity. Since the oath relates to the office of the Queen, it probably requires the unanimous consent of the Senate, House of Commons and all provincial assemblies to amend it, as provided by the Constitution Act, 1982, section 41. Section 41 uses the broad term "in relation to the following matters" when referring to the office of the Queen. That includes not just the existing law, but the subject the law deals with as well.

Therefore, can the Ontario Parliament create a second compulsory oath of allegiance such as Bill 22, which clearly attempts to legislate in an area of existing constitutional legislation? Section 128 does not say "an" oath of allegiance; it says "the" oath of allegiance. Is there a constitutional basis for two oaths of allegiance?

I might mention at this point, and we can discuss it later, the situation in Quebec was mentioned, but Quebec has not been unknown to pass unconstitutional legislation in the past 20 years.

The Constitution also provides that there shall be a Lieutenant Governor for Ontario appointed by the Governor General. Do you believe that Ontario could pass a law establishing an elected provincial president in addition to the Lieutenant Governor and maintain that it did not contravene the Constitution because it was in addition? Bill 22 is an attempt to avoid the intent of the Constitution and there is no way to pretend it does not. It is ironic that the bill would have members swear to perform their duties in conformity with the Constitution and yet flout that very Constitution.

Was the oath of allegiance, by being put into the Constitution, not purposely removed from ordinary provincial jurisdiction? That is what constitutional law does. By what authority does a Legislative Assembly presume to create its own oath? While the Legislature may establish the qualifications and disqualifications of

MPPs, subject to the Charter of Rights, does that include oaths of allegiance? We would draw your attention to section 84 of the Constitution Act, 1867. Section 84 provides for election laws existing in the province of Canada prior to Confederation to continue after Confederation in the new province of Ontario until its Legislature otherwise provides.

Among these laws are those "...relative to the following matters or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the Assembly of Canada, the qualifications and disqualifications of voters, the oaths to be taken by voters...." Notice that the oaths to be taken by legislators is not included.

It is clear that the expression "qualifications and disqualifications of MPPs" in this section does not include oaths, because the two categories are listed separately for voters in the same section of the Constitution.

Also, assuming it could establish a second oath, can the Legislature establish an oath of loyalty to Canada without first establishing a legally binding definition of "Canada"? Can you have laws without the law being defined? It is not good enough to say that we know what it means. We do not know what it means. I have talked to many people who have said they want an oath to Canada, and every one of them has given me a different definition of what they mean by "Canada." Trying to establish such a binding definition will lead to enormous disunity.

I might add at this point, if you have a law that says "must be loyal to Canada," that implies your ability to expel a member from this assembly who does not hold that oath. So oaths are not just pious statements, they have to be enforceable, and that's why you need a definition of what you mean by "Canada" if you're going to put that in, so that you can then enforce it against people who are charged with not being loyal to Canada. We know what it means to be loyal to the Queen. That has been defined in Canadian law.

Would such an oath, not being part of the Constitution itself and thus subject to the Charter of Rights, not violate the charter by placing an additional impediment on the democratic rights of Ontarians? Section 3 of the charter states, "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of the Legislative Assembly and to be qualified for membership therein." An oath to an undefined Canada, which could and probably does imply a commitment to certain ideological values, cannot be imposed on a Canadian citizen before allowing the citizen to take a seat in this assembly.

What should the Legislative Assembly do? The current oath to the Queen is an oath to Canada, so there is no need for a new oath. All that is needed perhaps is a better understanding of the existing oath. That seems to me what Mr Agostino has really been talking about, at least initially, in why he felt the need to take a second oath. There are no constitutional impediments to doing this, and it will serve national unity better by strengthening the oath that all legislators in Canada are required to take.

1640

We would like to express to this committee our agreement with the suggestion put forward at second reading by the Premier's parliamentary assistant, Julia Munro, MPP. Her suggestion was that when administering the oath of allegiance, the clerk who administers the oath could describe the significance of the oath with a statement such as:

"Her Majesty, the Queen, is the sovereign authority of Canada and Ontario. At her coronation, Her Majesty took an oath to govern the people of Canada according to their laws and customs and to cause law and justice, in mercy, to be executed in all her judgements. You are now asked to take the oath of allegiance by which you will be binding yourself to Her Majesty's oath to the Canadian people, and through Her Majesty, committing yourself to serve the people of Ontario."

Such an introduction would accomplish, we believe, all the purposes Mr Agostino has given for his private member's bill, it would affirm the monarchical nature of Canada which Mr Agostino and others who support his bill have said they wish to do, and it would not violate the Constitution of Canada. It is the course we strongly urge this committee to follow, to live up to the motto by which Ontario society has always lived: "Loyal She Began; Loyal She Remains," loyal, that is, to the sovereign.

The Chair: Thank you very much for your presentation. I'd like to now inquire if members have questions on the presentation we've just heard from the presenters.

Mr Stewart: I have one. It's a comment, I guess, more than anything else. It's on page 3, the last line of paragraph 3. I don't mean this, sir, in a critical manner. Certainly the Queen is a most admirable woman, but your comment that she is the face of Canada, I have difficulty with that one, because the face of Canada is the Canadian people who live in this great country. I have a grave bit of difficulty with a statement like that. You don't seem to give very much—whatever—to the Canadians. She didn't build this country, they did, and your reference to her still being the face of this province or this country I have difficulty with. I'm not trying to be nasty. I just am a Canadian through and through, and that type of statement I have difficulty with, sir.

Mr Toffoli: I take your point that you're not trying to be insulting or whatever. I quite understand that. In fact, it leads to a point I would like to raise myself, because it was raised by Mr Agostino in previous questions.

To say that the Queen is the face of Canada is not to say that the people of Canada have nothing to do with the country or that there's a contradiction between the two. As one who was born in Canada and has a mixed background—on one side, I can trace my family back to the 19th century in Canada, and on the other, to immigrants from Italy in this century, so I don't see the contradiction between the two.

To say that the Queen is the face of Canada is that the Queen is the constitutional face. The Queen is the image that projects Canada to the rest of the world. The Queen speaks for Canada when she speaks to the representatives of other states. This does not mean that the people of Canada are somehow excluded.

The point that brings me to is that Mr Agostino mentioned, and the question was raised, about the Quebec oath that they have added, and also the question of oaths taken in other countries. Mr Agostino was referring—in sincerity, I'm sure, but mistakenly, and then it was corrected by someone—that the oath that was added in Quebec is not to Quebec, is to the people of Quebec.

That is a very important constitutional distinction. If it is possible to have a second oath and if one insisted on having it—I don't think it is necessary—clearly the oath would have to be, as they did it in Quebec to the people of Quebec, to the people of Canada, to the people of Ontario. The Queen is Quebec in constitutional law; the Queen is Canada; the Queen is Ontario. If you try to have a second oath that says, "We are loyal to Canada," you've already said it. You either mean the Queen therefore is not Canada, which is unconstitutional, or you are repeating yourself, which is meaningless. When Quebec wanted to proceed in this form, they quite properly, if they were going to have such an oath, added to it "the people of Quebec," which is distinct from "the state of Quebec," which is the Queen.

I won't say there are no countries, because there are probably countries we haven't seen the evidence for, but to the best of our knowledge, no country in the world has an oath to the country. The American oath is not to the United States; it is to the Constitution of the United States. We checked with the high commissions and embassies of various countries and every country told us they either do not have an oath or the oath is to the constitution or some way of expressing the country. No country that we consulted had an oath to the United States, to France, to Germany etc.

Mr Gilchrist: Thank you very much for your presentation. You've raised a number of excellent points, including one I hadn't noticed and I think it's a pretty compelling one, that section 128 of the Constitution Act refers to the subject of concern that brought about all this as "the" oath of allegiance. While we in this House sometimes play fast and loose with the English language in terms of the rhetoric of debate, I don't think there is much disputing that "the" is specific. It does not say "one of" the oaths of allegiance. It is it, and so I agree with you on that point wholeheartedly.

The suggestion on page 6 that having a preamble to the oath of allegiance, or something where the Clerk would recite a passage to a member and your response will be the oath of allegiance—your confirmation that everything you've just heard from the Clerk meets with your approval—I think is an excellent one. Are you comfortable? Is this a proposed wording that the Monarchist League would be happy with?

Mr Toffoli: Yes, this is a proposed wording. That's obviously what we would be happy with, but something very close to that. If I may respond, I agree; obviously we agree, because we submitted it. If the feeling is that people don't understand what you are swearing to, what the oath is, what this is all about, what commitments you are making, I don't see how taking an oath, "I am loyal to Canada," clarifies that in any way.

If the oath to be loyal to the Queen is not clear enough, the oath to be loyal to Canada when, as I have

said, there are so many interpretations of that, surely if the members hear the coronation oath, which is the source of all those in Canada, the significance of what they are doing would achieve the legitimate concerns of Mr Agostino. I think he has legitimate concerns. I just think his solution is improper.

Other MPPS might well have that same concern, and I would think something like that in the way of a preamble would achieve all that purpose. It would be repeated every time and yet it wouldn't require any concern about whether or not this is legal, whether or not this is constitutional; it would avoid all the problems.

Mr Gilchrist: Let me just ask you for clarification on one other point. Reference has been made, and you have made reference as well, to the second affirmation or oath taken within Quebec. This one does not use the word "allegiance" or the words "pledge allegiance" a second time. It merely states, as I said earlier, that their first obligation as elected officials within Quebec is to the people of the province who elected them. I find nothing odious about that, I think it's quite appropriate and I know I would vote for something similar here if that were on the table.

Have you discovered any jurisdiction where there is a second affirmation of any kind that uses the word "allegiance"? In other words, there might be supplementary undertakings made in the course of swearing in. In fact I note in the Quebec one, and this may be subject to interpretation from the French, over and above the mandatory oath they have added, "Her heirs and successors according to law, so help me God." That is not contained in the Constitution Act. To some extent, we may find examples of where people have put suffixes on to the original. Have you found any jurisdiction where they come out and make a second allegiance? Can you serve two masters, in other words?

Mr Toffoli: Not to my knowledge.

1650

Dr Toporoski: This isn't quite a parallel, but you may have read about the controversy in Australia of no longer requiring persons who are going to acquire Australian citizenship to swear allegiance to the Queen. The last government was very nasty on that subject. Because there were legal problems about this, they simply ask new Australians now to pledge a fuzzy—they don't use the word "allegiance" precisely because the lawyers tell them. Some people are questioning: "Have these new Australians in fact become Australians? Have they fulfilled the law?" They certainly haven't sworn any kind of allegiance precisely.

Mr Gilchrist: I note that there was recently an election and that the government which did that was just thrown out on its keister. The new Liberal government, which is really their Conservative government, has indicated there is no longer a march towards republicanism, and we may very well see a reversal on that one as one.

Mr Toffoli: Your point that Quebec does not use the word "allegiance" in the second one—I didn't have it handy in front of me; I didn't want to refer to that specifically. You have highlighted, and there's the example of Australia and the problem there and in other countries, that the real problem is using the words

"allegiance" and "Canada" because allegiance is owed to the state and the state is already defined. So yes, if you put in a second oath that didn't use the word "allegiance" and talked about the people of Ontario—that's the next question: Why not include the people of Ontario? Those are the people you're serving, not the people of British Columbia or the people elsewhere, so there's that whole point. But removing the word "allegiance" and referring to the people would certainly alleviate much of our concern on that specific point.

Mr John Hastings (Etobicoke-Rexdale): I had taken your presentation, and I hope you'll take it in the right comparative light, as being almost similar to a strict American constitutional constructionist view of the Constitution, if you were living back during the Civil War, just prior to the breakup of that country. I'm wondering how you come up with the statement that Canada could be defined in so many ways. Were you referring to those ways as being geographical and psychological or cultural?

Mr Toffoli: I wouldn't exclude any of what you said, and Richard may want to speak to this as well. Because our tradition has been to leave much freedom for interpretation and understanding of what the community is under the crown, we have not tried to define what Canada is. The essence of our constitutional approach has been that we have a very narrow and specific definition of "allegiance" to the sovereign, who is the state. Once we have what you can call a minimalist approach, it's the essence of our democracy that you have to have some focus of loyalty, of allegiance to hold a country together. But you want to make that as defined, as narrow, as strict as possible to allow the greatest flowering, understanding and appreciation of the country. That has been our tradition. So yes, we have a very narrow definition of "allegiance" to allow the greatest definition of what Canada means. I would include all those. I think Canada includes the geographical boundaries, but what happens if those boundaries change? Mr Agostino made the point, a very valid one, "I'm a product of that change in Canada," that the Canada of today has evolved. The Canada of today is not the Canada of the 1940s, the 1950s or the 1960s.

Does that mean the nature of your allegiance is changing? If we had had an oath to Canada in the 1950s, would that have meant that the people who took the oath to Canada as it then existed are precluded from seeing that Canada change? That's what the words mean. If you take an oath to Canada as it exists today, does that mean, if someone wants to change Canada, that you somehow must stop that, or if you want that, that you are against Canada? When I hear debates in the Legislature, I hear opposition members, whoever is the opposition at the time, saying that the government is destroying the country, that their policies will ruin what stands in Canada, the values. At present, if you remove certain government programs, this is destroying the country. I assume that the people who make these accusations and the people who defend against the accusations in each case are sincere in what they are saying. If they are sincere, then the opposition is accusing the government, or vice versa, of being against Canada every day in the

House. That's what it means, and as legislators you deal with words. Ideas and words mean what they say. You can't escape the logic of words.

Mr Hastings: Let me ask you this question. I originally supported getting this to committee and I didn't have a problem with hearing the debate, but I was starting to reflect back that maybe one of the reasons—I'd like to hear your comments on this: To what would you ascribe this tendency or trend to want to have a swearing of the oath to a country? My first impression is that possibly part of this muddled thinking—I'm not attributing it to Mr Agostino at all, but in general—is attributable to a fundamental lack and absence of teaching history in our schools any more, and particularly the utter failure of ministries of education, including that of this government, to place an appropriate stress on the role of the sovereign, the Queen, whether you agree with that or not in terms of what you see with what has emerged in the thinking in Australia, where new citizens in the last three years don't even know if they're really true Australians. Is there some validity to my impression that it is due to the failure of history being taught in the curriculum any more in terms of the Constitution and the evolution of Canada?

Mr Toffoli: I'll ask Richard. Richard is an associate professor at university. It's his field.

Dr Toporoski: But in classics. If I could speak personally, a little bit from the heart, I think that's absolutely right. There is a failure in our educational system. Canadians don't know how they got to be Canadians and why they are Canadians. If I can think back to 1970, when the Parti québécois was elected for the first time and the referendums that came later, I thought to myself, "No, nothing's going to happen; everything will be the same." It was only in the middle of last October that I thought to myself, "Uh-oh, look at those polls; things look bad," and suddenly the utter chaos and confusion was upon us. I think the desire is on the part of people to say something positive about Canada, about Canadian unity. The problem is, as Mr Toffoli has pointed out, what does this fuzzy concept of Canada mean?

I have come to the conclusion, and this is my thinking now—I am prepared to be argued out of this as time goes on, as we see developments, and I would have beaten Richard Gwyn into print had the issue of Monarchy Canada in which I said this gotten out sooner—that ultimately we have to try to do the best we can to keep Quebec united with the rest of Canada and maybe we're going to have some kind of Austria-Hungary relationship. That's what he said. Later on he came up with an idea I hadn't thought of, that maybe we need a Wallonia-Flanders relationship as in Belgium. It's interesting that in both of those cases the link between them is the sovereign who presides over both, who in a sense is both because he is neither, if you like.

I have thought of another one: the relationship that existed for 90 years between Sweden and Norway. Quebec wants to keep so many things in common. Norway had its own consular service but it was represented by the ambassadors of the King of Sweden. Maybe we're going to have to have some very loose relationship but keep as many things as we can talk Quebec into wanting to share with us.

If I were to present myself as a candidate for election to the Legislature of Ontario and these were known to be my views, would someone say: "You can't sit here; you don't believe in the Canada I believe in," because I couldn't in conscience swear to this absolutely united Canada because at this point I'm plumping for a kind of extreme, asymmetric federalism? I think that might be the only thing we can talk them into ultimately—try to talk them into as many things as possible, but maybe they won't go along with too much.

On the other hand, there are a lot of Canadians who say: "Yes, yes, I can swear this oath. I believe in Canada, but if those Quebeckers get out, well, get out. They can't share our citizenship; they can't share anything." I would say those people aren't really loyal to the Canada they want to be loyal to. Who is to choose which of us is being loyal to this concept of Canada, because it is so undefinable?

Mr Hastings: That's why you're advocating Ms Munro's possibility as some way of trying to reflect our esteemed member for Hamilton East in dealing with the problem, although I'm sure he has a completely different viewpoint on it. I'd like to hear his views on her suggestion and your reaffirming that.

1700

Mr Toffoli: As I said at the beginning, we know Mr Agostino supported the retention of the Queen in the police oath in Hamilton. He had a good record from our point of view, not that we were there to judge him per se, but we had no problem with Mr Agostino and I appreciate his concerns. It's his solution that we have a problem with, not the concerns. The point we emphasize each time—we repeat, but you can come at it from many different perspectives and you still get the same problem.

I can give you another example: What you take an oath to is that which is beyond debate. In the House, for instance, we mention that you take an oath to the Queen, and the Queen's representative is the Lieutenant Governor, as you all know as members of the assembly. When the speech from the throne is read, either here or in Ottawa, you do not debate the speech from the throne, because that would be challenging the Lieutenant Governor, questioning him, criticizing him. The Lieutenant Governor reads the speech from the throne, then the government reads its response to the speech and then the opposition attacks the government's response. That's a form, if you will. It's perhaps a formality, but the concept is the same. Because you have taken an oath to the Queen, you cannot attack the Queen's representative.

If you've taken an oath to Canada, you cannot attack Canada. But you are attacking some aspect of Canada every day in the House. That's why we have a Legislature. If we all knew what Canada meant, if we all agreed, we wouldn't need a Legislative Assembly, we wouldn't need democracy, we wouldn't need any government. Everything would be set out for us. Why would we be sitting here?

We are debating right now the whole notion of what Canada is. You don't put that which you want to debate, which you want to have open for discussion, for growth, for change—what was relevant 50 years ago is not relevant today, so we change it. We're now different.

You want to have that freedom. You can say this is just a PR statement, but it's going to be a law. Laws must be obeyed. If you expect people to obey the laws that affect our daily lives, we will expect legislators to obey the laws they set for themselves. So yes, you will have to obey the law. That's why you don't try to put in something as broad as an oath to that.

Mr Agostino: Just a question to the gentlemen. I appreciate the tone of the paper. We've agreed on issues in the past. We disagree on this one, but certainly I appreciate the role that you continue to play.

The first question is, do you agree with what the Conservative government did in reference to the oath police officers take when they get sworn in as police officers? Do you agree with the change they made that police officers now have the choice to swear either to the Queen or to Canada?

Mr Toffoli: No, we do not.

Mr Agostino: You felt that the government should not have restored—

Mr Toffoli: What we submitted to the government was that—well, there were a couple of changes. Actually the old oath that the police took was not an oath of allegiance, to start with, it was an oath of service. We thought that distinction should have been restored, that no one had asked police officers to take an oath to the Queen or anybody else before; they were asked to take an oath to serve the Queen.

Our suggestion was along the line—I don't have the actual thing we submitted, but I can tell you it was to the effect that the oath should have referred to serving the people of Ontario. Again, we wanted it not to be an oath of allegiance so we suggested the oath should have been something along the lines of the police officers swearing to faithfully serve Her Majesty the Queen and Her Majesty's people in Ontario—I've forgotten the exact words—and all people under Her Majesty's protection in this province.

Having two oaths—if I were a police officer, say, or appointed to a police commission—I'm not looking for an appointment, so I'm not expecting one—but if, for instance, I was found in that situation, I couldn't take the police oath as presently constituted, because to my mind it would mean that I would be taking an oath that the Queen and Canada are not the same, or that the "Canada" incorporates things I do not believe in. If I were asked to take an oath to serve the people of Ontario as a police officer, I'd have no problem taking that. So the short answer is no, for the same reasons that we object here, we objected to that specific change.

Mr Agostino: Most police officers across Ontario, I think, welcomed the change and saw it as a change that was necessary.

Mr Toffoli: I think because they wanted to take the oath. It's an improvement in appearance, because they wanted to take the oath to the Queen, but constitutionally I think there are a lot of problems with the way it was worded.

Mr Agostino: Just a small point on this—I understand the concerns. What I guess I still have a difficult time understanding is if we kept the initial oath in place as it was, as it is and as we have no authority to change, and

added a second one that would repeat—even if I grant to you that it does repeat what the first one does and that second one repeats—but says the word "Canada," can you tell me what your objection to saying "Canada" in the second oath would be, why you're opposed to the word "Canada" in our oath of allegiance, our second oath that we take?

Mr Toffoli: The second oath, yes. Two specific points: One, we don't know what you mean by "Canada" and that's the whole crux of this discussion. If by "Canada" in the second oath you mean the state, then you would be asking me to take an oath that I considered the Queen and the state to be two separate things. Because I'm taking an oath to the Queen and then I'm taking an oath to the state, I'm thereby acknowledging that the Queen and the state are not one and the same. I do not believe that. I could not take that oath.

If, on the other hand, you say "Canada" in that context does not mean the state but means something else, then all right, I can accept that. What else? Unless I know what else—if I take the oath, I won't be the one defining it. Some judge or some Legislature may come along and say, "You took an oath to Canada, this is what 'Canada' means, and you are not abiding by that," and I say, "Well, that's not what I meant; that's not what I thought I meant," who's going to define? Unless it's predefined. If you want an oath to Canada, define "Canada" first, then ask me whether I'll take an oath to it. I guess that would be my response. If you want me to take it, I have to know in advance what exactly you mean by it, because we agree we have different views what it means.

Mr Agostino: I think what makes this country what it is is the fact that we don't have one defined, boxed definition of what Canada is, and I hope to God we never get to that point. I think it's important, because the beauty is that we can do that and Canada can mean to all of us the freedom of expression, the freedom of principles that we choose, the freedom to live our lives the way we want to, and that is what makes Canada. To me, taking that second oath to Canada gives you that opportunity to define Canada in your mind the way you want it to be and the way you envision Canada. I don't want Canada to be a box where we all must think this way and this is exactly what Canada should be like. If you want the clearest vision to me of Canada and what symbolizes Canada to me, that is the maple leaf and the Canadian flag, and that is the first thing that comes to mind when you want to talk about Canada. What symbolizes it is that maple leaf and that Canadian flag, to me, and that's what defines us around the world.

Mr Toffoli: Mr Agostino, if I may respond, we are in entire agreement, at least with most of what you were saying there, about the diversity of what Canada means, and I think that was the most eloquent argument why not to have the oath.

If you're saying you're taking the oath for what it means to you, there's nothing to prevent you from doing that. You are able to take a second oath. What you are trying to introduce is a compulsory oath that every member must take. You were told you cannot change the existing oath, but everyone is free to take another oath. You took a second oath. The Bloc québécois members in

Ottawa took another oath themselves afterwards. There's nothing to prevent us as individuals from taking oaths as to what we believe in. That's entirely a personal decision and on that level, if a member now feels he wants to take an oath to something else, it's not a legally required thing, but you are able to do it. There's nothing to prevent you, there's nothing to prevent any other member from also taking an oath to that or taking an oath to national unity. There's nothing to prevent that right now.

1710

Mr Carl DeFaria (Mississauga East): I understood you saying that "Her Majesty the Queen" means "Canada."

Mr Toffoli: The legal embodiment of the state of Canada, the Canadian state.

Mr DeFaria: Right. If that's true, what's the difference in the proposed oath that just substitutes "Her Majesty the Queen" for the word "Canada"? Wouldn't it be the same oath from your interpretation of it?

Mr Toffoli: Then why have a second oath?

Mr DeFaria: Why not?

Mr Toffoli: Do you have redundant laws, repetitive? Is that what it means or is it an attempt to give another meaning, to say that the Queen is not the state? That's the question there. The one oath has already established that the Queen is Canada. We are suggesting that be clarified as a preamble to the oath. It seems to me that's a better way of dealing with it, a clarification of what it means. There's no problem with that. It's just when you come to the actual oath itself, because to me Canada doesn't mean that. Canada to me means all the things Mr Agostino spoke about. So when I say "Canada," that's what it means to me, in that context.

Mr DeFaria: But at the same time you say that you don't understand what Canada means?

Mr Toffoli: No. I'm saying Canada means everything that constitutes Canada, and that's why I can't take an oath to all that because I would admit that there are ideologies within Canada that I think are perfectly legitimate points of view for people to hold, but I don't personally hold them. There are religions in Canada, all of which are legitimately Canadian religions, but I have my own particular religion that I believe in. I respect the beliefs of others, but I don't share them.

When you take an oath of allegiance, you mean you are sharing not just the freedom to be different, but that there are no differences. I think it does the reverse of that. I get the sense that the members want diversity reflected, but an oath to Canada narrows the diversity, it doesn't expand it.

Mr DeFaria: Isn't your argument just an opposition to change? Aren't you just opposed to the change of someone preferring to use the word "Canada" to the words "Her Majesty the Queen"?

Mr Toffoli: But the Constitution already establishes the oath to the Queen, and the purpose of that is because the Queen is the state, so this Legislature cannot change the meaning of that. If this Legislature puts in a second oath, it has to mean something different from the first oath. The current oath is not an act of this Legislature, it's part of the Constitution. The significance of the first oath can only be changed by constitutional amendment,

so if you're putting in a second oath, it has to mean something different from the first oath. You're not in a position to change the meaning of the first oath.

Mr DeFaria: So if we are not in a position to change it by adding the other oath, aren't we not changing anything other than repeating the same oath twice?

Mr Toffoli: There's no need to change the existing oath. The danger is, you're saying if you put in an oath to Canada it's going to mean whatever you're claiming. The point that we are making is one doesn't know what it's going to mean, because such oaths have not existed in our constitutional law. Therefore, a judge might well rule that it means something completely different from what you may think it means today. That happens all the time, especially with the courts ruling on constitutional matters. You can't guarantee to me that it's going to mean what you say it's going to mean today.

Mr DeFaria: I just don't understand what the word "Canada" can mean that would be adversely affecting the province or the country. The word "Canada" is just Canada. Canada may mean different things to different people, but the oath of allegiance that anyone serving in Canada takes is clearly to this country, although it's made to Her Majesty the Queen as representing the country. But the oath is still an oath of allegiance to Canada.

Dr Toporoski: But it's an oath of allegiance to Canada only in respect to the sovereign of Canada. Suppose someone having taking this putative oath to Canada held the view that the new relationship in Canada should be Canada-Quebec. Has he broken this oath? You made him take an oath to Canada, and he says, "My view of Canada and the only way we're going to survive is Canada-Quebec," like Austria-Hungary, like Sweden-Norway. I would have thought he'd broken the oath.

Mr DeFaria: Say that again.

Dr Toporoski: You have said you think that people could take an oath to Canada, whatever that means. Suppose someone in this current national crisis or bi-national crisis says, "I think the only solution, and I'm going to fight for this because I think it's the only way to preserve as much as we have, is for Canada-Quebec, and we'll call it that," and yet that's not what he took his oath to. I presume you feel he's broken the oath. A member of this Legislature not allowed to hold that position.

Mr Toffoli: In other words, say your colleague next to you felt that Quebec should be allowed to secede—I'm not saying he does, but let's just say for argument's sake—or somebody in the House got up and said, "I think the country should be broken up, that Quebec should secede." Should that member be then thrown out of the Legislature because he's disloyal to Canada?

Mr DeFaria: What does it matter what oath the person took?

Mr Toffoli: But if the person took an oath to Canada and then said, "I think Quebec should be allowed to go," which would break up Canada, is that breaking their oath to Canada? Does Canada mean the geographical boundaries of Canada today, and if you then say Quebec should leave, you are then breaking your oath to Canada? That's one interpretation.

Mr DeFaria: What if somebody took an oath to the Queen?

Mr Toffoli: The Queen is embodied both in the state, the provincial and the federal level, so that Canada has changed its geographical boundaries throughout. For instance, there was the province of Canada which separated into Ontario and Quebec. Ontario was founded by the separation from Quebec.

In the House of Commons in Westminster, British MPs got up during the American Revolution and said: "The American rebels are right. They should have their freedom. We shouldn't be keeping the 13 colonies part of the British Empire." They got up and said that. None of them were expelled from the British Parliament for saying in effect that the United States should go its own way. Irish nationalists stood up in the British Parliament and were not thrown out for that reason.

I must admit, we had the Bloc québécois in Ottawa who I think should have the freedom to say what they're saying. The United States, by contrast, when the 13 colonies were created, if you didn't support independence you were expelled from the Congress. All these things could be used against—you don't know what it's going to mean; that's our whole point.

Mr DeFaria: So you're saying it's more palatable for someone who took an oath of allegiance to the Queen to agree to back separating than to somebody—

Mr Toffoli: I must admit, it's not breaking your oath to the Queen if you happen to support changes.

Dr Toporoski: What you are committing yourself to in an oath to the Queen is not to plot against her person, her crown or her dignity, so I think you would be maintaining that she should remain the Queen of that portion of Canada called Quebec. You would be fighting for a fundamental part of Canadian unity in fact.

Mr DeFaria: You are saying that it's more palatable for someone who took an oath of allegiance to the Queen—

Dr Toporoski: How do you mean "more palatable"?

Mr DeFaria: —to go on record agreeing to separation of Quebec.

Dr Toporoski: Are you saying that in a free and democratic society a person isn't allowed to hold the opinion that there should be a looser or indeed a separate relationship between Quebec and the rest of Canada?

Mr DeFaria: I think they are not understanding what oath they take.

Dr Toporoski: But if you've made them take this oath to Canada, then you've limited their ability even to discuss or to explore the matter.

Mr DeFaria: No, because Canada can evolve, just like our Constitution has evolved. A lot of things have changed in our Constitution.

Dr Toporoski: Yes, but the sovereigns change by death normally, so the oath passes on to a new sovereign, so why is it a necessity to have this oath to an undefined—I can't tell now whether it's an ideology or a piece of geography. We're back to our original argument; we don't know what it means.

Mr Toffoli: The problem is we're getting into so many convoluted things and that's our whole point, that if you pass a law and it says you cannot drive through a red light, you know what that means. There's a red light; if you drive through it, you get charged and you're fined or

you cause an accident, whatever. You have a specific law that's easily definable and you know what the punishments are if you break that law, and therefore everyone knows where they stand. That's what law should be.

Our point is, from this discussion nobody knows what we're talking about. Everyone here seems to have a different idea of what we're talking about when you say what the oath is going to be, what the punishments are going to be. I want to know what you mean. What are the punishments. How are people punished by not abiding by this law?

Mr O'Toole: I know it's a very convoluted argument, so I won't protract it any longer than necessary. I just want to go on record as saying at this time in Canada it's extremely important that we all recognize the tenuous nature of Canada and the importance of Canada remaining as one country. That's my starting position. I don't have a problem with the fundamental premise of Mr Agostino's bill.

I do have some questions to work through, I suppose, and I'm sure this will get a little further debate, but I think we're subverting, in some ways, the very constitutional law aspect of this whole thing by introducing this definition of Canada. I could go on to say, "I've defined the Queen or the monarchy," if you will, and then I go on to define Canada, then I go on to define Ontario, or at least in my oath priorities I'd say I'd be right down to defining Durham East, right down to defining the particulars within my constituency group which may be cultural or religious. So subtly I could be subverting the whole thing by saying, first of all, yes, and go right down the list.

1720

What if I just started by saying, "I want a second oath," and it says I only support this new thing, whatever this new thing is? "I'll do the Queen, I'll do Canada, but I want this new one, this new one that says I only support this other thing." I think we're subverting. Do you know what I mean? Somewhere down that priority list—my point is this, if I could make a point, and perhaps you could respond: Your argument seems to be premised on the view that we found at the highest order some undefined or defined shared value, ie, the monarchy. The moment you move down to the next order of protocol, ie, Canada, it's in the definition legally of what is that. Is that not the premise of your whole argument? If I move down to Ontario—well. Do you know what I'm saying? If I move down to my own constituents—really, I'm here representing them theoretically but I subjugate my beliefs for the greater good of all of Ontario; indeed, I suppose, Canada. Can you respond to that sort of—

Mr Toffoli: Yes, I think I agree with that. I would say, yes, that the Queen is an objectively definable—

Mr O'Toole: Common system.

Mr Toffoli: Common system, yes—and that what we believe, not just we personally, what Canadians have always believed, is that within that there are many—

Mr O'Toole: Cultures, beliefs, whatever.

Mr Toffoli: —cultures, many levels, and you want as much diversity and as much freedom to express and define that in the way you want. Therefore, every time you try to define another portion you narrow it. Defini-

tion, by its nature, excludes. If you define something, if you say, "Define Canada as this," you mean it is not "that." So the more definition you put in, the more exclusive you become. We think Canada should not be narrowed in that way; it should remain as broad as possible, and that's why we don't get into trying to—

Mr O'Toole: I won't go on, but I think one of the best—one of the cutouts was the one on the Bouchards and their requirement to take a secondary oath, in their view. A bloc group took a secondary oath which trivialized, in my view, the first. In that respect, it's a subtle disrespectful statement. I'm not suggesting for one moment yours are, but as time moves on—I'm no person who would be classified as resistant to change, but we have a shared system and I think the subtle compromise here might be to recognize the members' ability to choose to take a second oath. That may be Canada, it may be something else. I'm sure in the year 2010 we'll be still talking about what I'm elected to represent. Jeez, I don't want to narrow that down too much. I'm supposed to be here to represent all the people, regardless of their culture, ethnicity and all the rest of it. It's everyone. Greater good for the common—

Mr Toffoli: And, as we said earlier, that option to take a second oath already exists. This bill would create a compulsory second oath that would be the same for everyone that they would all have to take.

Mr Shea: I really have to make sure I start reading the minutes of this committee from now on with greater diligence. This is intriguing, and I pray that somehow the minutes of this meeting don't get to some graduate students in Canadian history. There would be some intriguing discussions going on.

I have to, for the purpose of the minutes, dissociate myself from some of the comments of my very fine and distinguished colleague Mr Stewart, but it does raise a point that two of my colleagues, who I think have focused upon inadvertently in their questioning—and it goes back to the comment I tried to raise earlier—I want to come back to this question on it now, because my good friend Mr Morin is now here—when I did such a poor piece of French speaking when I said, "L'État est moi," which was surely Louis XIV's classic—

Mr Gilles E. Morin (Carleton East): "L'État, c'est moi."

Mr Shea: There you go, you're quite right, and now I've got it right. That's why I needed you here to correct me, and I appreciate that. I will never forget that from now on. I will use that in every second speech in the House from now on.

But that point is at the heart of what we're about at this moment in this discussion. How do you, as the Monarchist League, respond to the observations, outbursts, exhortations or puzzlement that are put to you by these two colleagues on this side of the room who do not understand that issue in the British tradition? They are expressing a view that becomes more prevalent, so how do you deal with that?

Mr DeFaria: Mr Chair, on a point of order: I wonder if Mr Shea was referring to me.

Mr Shea: No, I was referring to a number of comments in terms of the British traditions, the history.

Mr DeFaria: You indicated that someone doesn't understand the British—

Mr Shea: May not understand that significance. They may or may not, but the interpretation may be somewhat different. You may disagree with that interpretation.

Mr DeFaria: And I disagree with your comment.

The Chair: I don't think it's a point of order. It's a point of disagreement, perhaps, between members.

Mr Toffoli: To your question, Mr Shea, perhaps I should make a historical note that as far as the record goes, Louis XIV never said, "L'État, c'est moi." Historically, Louis never said it, but Elizabeth II could say, "L'État, c'est moi," because it is true. This gets into a very, I won't say convoluted as much as a complex issue, and I shall try to summarize the significance of that.

I think it is one of the great protections of democracy and one of the weaknesses of the republican system that in our system the Queen is the state and the people are not the state. The reason for that is that when you have a society such as ours where we recognize that the Queen, not the people, is the state, it therefore allows the people to stand apart from the state, to criticize the state, to not take responsibility for what the state may have done. It has been pointed out that in a regime where it is considered that the people themselves are the state, to oppose the state is to oppose the people, and when you do that, you cease to be the people. If the people and the state are synonymous and to oppose the state is to oppose the people, you put yourself beyond the pale; you're no longer one of the people.

A professor of history at McGill, who has studied the Russian system considerably, has pointed out that it was perfectly logical in Russia—the Soviet Union, I mean, Communist Russia—to send people to insane asylums when they opposed the government. Because the people are the state and to oppose the state is to put yourself beyond the people, therefore you're a non-person; it's a logical progression.

It is not a dictatorial concept that the Queen is the state. It is saying that the state and the people make up the country, and the people are independent free agents who can react to the state. That's very important.

Along the same line, there is another jurisdiction right now that's talking about putting in an oath to the country, and that is in Hong Kong, where Beijing is trying to have an oath to China put in for the legislators of Hong Kong.

Mr Shea: That's prior to 1997.

Mr Toffoli: Yes, prior to 1997, and the legislators in Hong Kong are resisting it with great strength because they know an oath to China means an oath to the Communist regime. I'm not suggesting that here, but that's why people don't have oaths. That's the importance of the Queen as the state. It provides the freedom of us.

Mr Shea: And that is certainly an interpretation within British history tradition. That is not necessarily a universal interpretation of allegiance or—

Mr Toffoli: It's within British tradition and many monarchical—not all of them, but certainly British.

Dr Toporoski: Just in case this issue should come up, I came along with Arthur Berriedale Keith. Those of us who are old enough to have studied Canadian constitutional history when we were undergraduates will run into

books like this, and maybe it's a book that younger people ought to run into. Berriedale Keith in this has collected a number of documents showing the growth, as he subtitles the book, from self-government—when we were self-governing colonies at the end of the 19th century and beginning of the 20th century—to national sovereignty. By 1931, the realms of the Empire had become independent countries. Now, what did that mean? He still calls them the dominions, because that was the language then. "The dominions are sovereign international states in the sense that the King in respect of each of his dominions is such a state in the eyes of international law." Up to that point, the British King was a state throughout the British Empire. Obviously, once we were independent, then he, presently the Queen, has become an independent state in respect of each of her independent realms. This is an international law concept.

1730

Mr Shea: Let's turn our attention to what Mr Agostino is asking for. He wants what could be referred to as the Canada 2 oath, and let's pick up on that for a moment. Does it really matter, if an oath of allegiance is in the first instance taken in its existing form, which you agree is perfectly acceptable, if one then says that a member, or anyone else for that matter, may have a choice of doing any other oath afterwards or any series of oaths afterwards? Does it really matter?

Dr Toporoski: May I draw a historical parallel? Mr Agostino mentioned that Canada today is not the Canada of 100 years ago. Let's throw ourselves back to 100 years ago, to 1896. Interestingly, there were lots of problems of national unity then. The Conservative government in Ottawa was trying to defend Catholic schools in Manitoba, and it was falling apart. That's another issue. There was a great movement among the self-governing colonies of the Empire—which in a sense were rather like the provinces of Canada at the time and ran all their own affairs; Britain wasn't running anybody's affairs—and a lot of people who thought: "Wouldn't it be better if we had more unity within the Empire, not just a formal diplomatic unity with the rest of the world, but a closer unity? Perhaps we should have a central Parliament that can legislate on issues of concern to the whole Empire." As you know, this was the Imperial Federation movement at the time. Suppose someone had stood up in the Ontario Legislature and said, "In addition to the oath to Queen Victoria, I think we should taking an oath of loyalty to the British Empire." Where would we be now? We would have all said at that time: "What do you mean by 'the British Empire'? What do you mean by such an oath? Do you mean a particular political project? You must mean that."

Mr Shea: But if we agree that the world is changing, and certainly the perspective of the world is changing in Canada—and you've heard some questions and observations made even from this side of the room today that would indicate there are different ways of interpreting history—does it really matter? If you first of all agree upon the first one and for whatever reason you say you will take that oath, whether it's for convenience or because you must do it, that it's in the rules and you have to do it, or if it's because you truly and heartfelt mean it,

does it really matter what else you do subsequent to that, except if it's absolutely contrary to the first oath? Surely you wouldn't say the oath that's done in the National Assembly is repugnant.

Dr Toporoski: Suppose some person in Quebec complains to his member of the National Assembly, "You're not doing what I want you to do." Has he broken part of his oath because he isn't representing all the people, is opposed to a particular desire—

Mr Shea: To answer Mr Stewart's concern—he spoke in a great populist feeling about the people—if you were to say, instead of the one Mr Agostino's suggesting, that number 2 becomes, "I swear that I will be loyal to the people of Ontario," does that create any problems for you?

Mr Toffoli: There are two points here, one in particular. First, is it a compulsory oath or an optional oath? That's one question.

Mr Shea: It's an optional oath. We're talking about that right now, as number 2.

Mr Toffoli: That's right. It's my understanding—I stand to be corrected—that there is nothing to prevent a member of this Legislature from taking a second oath at his own discretion.

Mr Shea: And that would have no effect upon the first one.

Mr Toffoli: No. My opinion certainly would be that a second oath or a third oath or a fifth oath, if those oaths did not contravene the constitutionally required oath and if they were optional—that is, you take your oath to the Queen, and then if you want to make a pledge to something else personally—presumably you do that when you get elected; you're making a pledge to certain policies. If you want to renounce that, I personally don't have any problem. I can't see any legal or constitutional—

Mr Shea: So a member could have a menu of choices as number 2, but the first one is the primary—

Mr Toffoli: The Clerk might have some concern at the time this would take. But this is not what we're talking about; this is a compulsory second oath.

Mr Shea: So that's very clear. Finalizing that, the first one is the principal one, and Mr Agostino's motion is not negating that at all. As I understand his motion, that stays in place, and the optional one is the one he wants to deal with, which is the Canada 2 option. You're saying it seems to be saying the same thing all over again.

Mr Toffoli: Except that this bill would make it a compulsory second oath for everyone. People would not have the option of not taking it. That is the problem.

Mr Shea: So your concern is because it's compulsory.

Mr Toffoli: Because it's compulsory. My understanding is that Mr Agostino already took the second oath and was not prevented, once he made it a second oath.

Mr Shea: Got it. Thank you very much.

The Chair: Are there any further comments or questions by committee members at this time? Mr Agostino, do you wish to sum up?

Mr Agostino: I appreciate the discussion today. Very simply, my intent here is to allow within provincial legislation all members of the House that opportunity to ensure that when we swear an oath of allegiance, we maintain our tradition; that we also acknowledge the new

Canada, acknowledge our own country, very directly. I think it sends out a very positive message to kids, to new Canadians and to the people who elected us to serve here as to our own feelings about this country. It is not harmful. It is an enhancement, an addition, and would really make a historic thing.

This bill cannot pass without the support of government members, and I want to assure you that this is not a partisan, political thing. When, hopefully, we get this bill passed through, I will very publicly, very clearly acknowledge that it could not pass without the support and the full consent of the government of the day, and that is why it has gotten as far as it has. I appreciate that, and I appreciate the fact that the government members supported the bill in the House and spoke in support of the bill today.

It really is an issue that crosses all political lines and has nothing to do with politics. There is clearly a change and evolution in our country, and one that most Canadians, from the calls I receive—and I've had calls from coast to coast, and letters, hundreds. I've never had such an outpouring of public support on any issue. The most moving calls and letters came from veterans, people who fought for Canada during the wars, people who spoke and wrote very eloquently how important to them it was that elected officials mention Canada in their oath of office.

The Chair: Thank you, Mr Agostino, and thank you, gentlemen, for your presentation this afternoon. It's been very helpful to the committee in its deliberations.

At this time it is appropriate to move to a vote on this bill, if there's no further—

Mr O'Toole: Mr Chair, I move that we adjourn.

The Chair: All in favour of the motion to adjourn?

Mr Shea: On a point of order, Mr Chairman: Do I gather that Mr Agostino or no one else wants to have particularly Mr Robertson, who provided the research material, here to answer and comment? I gather that's the case.

The Chair: I don't think that's a point of order, Mr Shea.

Mr Shea: Then in the form of a point of order, will the Chair explain to me why the researcher who has provided the documentation for the committee is not present?

The Chair: I don't know that that's the case.

Mr Sibenik: Mr Robertson is an official with the library of the Parliament in Ottawa.

Mr Shea: I see. Are you prepared to answer for him?

Mr Sibenik: No. It's just a background document that was available.

Mr Shea: That answers my question.

The Chair: There's a motion to adjourn this committee. All in favour of that motion? All opposed? The motion is defeated.

1740

We now move to a vote on the bill. Shall sections 1 through 3 of the bill carry? All in favour?

Mr Stewart: You're moving a little too fast for some of us slow fellows. I want to know what we're voting on, sir.

The Chair: You're voting on the bill, sections 1 through 3.

Mr Hastings: Before you do that, Mr Chair, I'm wondering if it would be in order to make amendments.

The Chair: Are there any amendments members would like to propose?

Mr Martin: You called the vote.

Mr Shea: You never even called for amendments.

The Chair: I apologize. The Chair made a mistake, and I would ask the members' indulgence. I did not ask for amendments and I should have done so. Are there any members who wish to put forward amendments to this bill?

Mr Hastings: Yes. Mr Gilchrist, I believe, wanted to propose an amendment.

Mr Gilchrist: Actually, a number of amendments. Not having sat on this side when amendments were proposed, do we do them one at a time? Are we doing these clause by clause, and if so, where are we?

The Chair: We would start with probably section 1. Lisa would like to address that.

Clerk of the Committee (Ms Lisa Freedman): The process would be that we would find out what sections your amendments are to. If your first amendment, for example, is section 3, we would then put the question on sections 1 and 2. If your first amendment is to section 1, we would deal with the amendment and then we would deal with the section. We just have to know the sections.

Mr Gilchrist: Okay. My amendments will be to section 1, the insertion of new section 2, the changing of the title, and amendments to the schedule.

The Chair: Do you have them in writing at this point?

Mr Gilchrist: Scribbling, yes.

The Chair: It would be helpful to have them in writing.

Mr Gilchrist: I'm told that despite asking our resource person outside to call me if there was a vote—what's the normal procedure, since we've just said we don't want to adjourn?

Clerk of the Committee: There are a couple of procedures you can do. First of all, amendments are usually in writing, and often we have legislative counsel available in the committee room to assist in drafting amendments. Legislative counsel is on call until 6 o'clock tonight. If you don't need the assistance of legislative counsel, we would need the amendments in writing. The members have to know what they're voting on.

Mr Gilchrist: When are we mandated to go till, 6 o'clock?

The Chair: Yes, we are.

Mr Gilchrist: So if I ask for a 15-minute recess, it's much the same as a motion to adjourn.

The Chair: I'm advised that it's not appropriate to ask for a recess when there's no question on the floor.

Mr Gilchrist: Okay. But I'm told that amendments can be made orally. I don't want to do anything that's more troublesome than necessary, but they are significant and they will involve considerable debate.

The Chair: Would you like to put forward the first amendment.

Mr Gilchrist: One section at a time?

The Chair: Yes. Lisa will take it down, and we can have discussion on that amendment.

Mr Gilchrist: Do I start with the title or start with section 1?

The Chair: Section 1.

Mr Gilchrist: I would amend by deleting the word "schedule," and put in the words "Constitution Act, 1867, as amended."

The Chair: Would you care to explain?

Mr Gilchrist: I would be more than happy to. Making reference to the submissions made by the Monarchist League and the references we've derived from the research assistant, there is no doubt in my mind that there can only be one oath of allegiance. The enabling legislation in the Constitution Act speaks to "the" oath of allegiance. English grammar class was a long time ago, but not that long that I fail to make a distinction between "a" and "the." "The" is very specific. It indicates in this case that it is the only oath that may be taken by a member, and therefore I would find anything that leaves any confusion in the minds of the members or prospective members who are going to be asked to take this oath—

Mr Bartolucci: On a point of order, Mr Chairman, please: I have a great deal of respect for the Chair, you understand that, so my comments are not directed to you personally, but they are directed to procedure, because I feel it's very, very important.

We were in the middle of a vote. By any rules of procedure, once the vote has commenced, it must be completed. According to the rules of procedure that I've lived by at municipal council, at regional council and here up until this point, I always thought that was the procedure. Not that I want to scuttle the amendment process, but I honestly feel that if we're in the middle of the vote, the vote should take place. I think that's essential. Anything less slants or skews what is being debated here, and I don't know that that's the intent of anybody around here. So I must suggest that someone will have to rule on this. Clearly, if we were in the middle of a vote, the rules of procedure say that vote must take place.

The Chair: On that point of order, Mr Gilchrist, did you—

Mr Gilchrist: Yes, I do, most definitely. First off, I can speak from firsthand experience sitting in the chair of a similar case where the clerk had given me incorrect advice, and in the middle of another act, namely, a vote, I was corrected and we followed the appropriate course. It was not in that case to go to amendments, but it had been another procedural step that had been left out. So I can suggest that there have been cases where human error has been reflected by the appropriate action of the Chair.

Secondly, I think it bears comment that all of these submissions were received minutes before the committee started sitting today. Both sides have indicated in the commentary when Mr Agostino was making his presentation and in fact Mr Agostino himself commented that he hadn't read the submissions made in here. I would not think it likely that Mr Agostino would go into the House and vote on bills not knowing what he was voting for and not knowing the legality of what he's proposing to do, and I think that's exactly what we're being asked to consider here.

I can't speak to the Chair's motive in—not motive; forgive me—to why there was a failure to ask for amendments, but that is the appropriate course of action.

So we've got two conflicting precedents in this case. You may say that once a vote starts, it continues, but it's also absolutely the case that you ask for amendments before you call for a vote on any bill. So I think this may require the wisdom of Solomon, but at the end of the day I think, given that you now do know that there is an interest in introducing amendments to this bill, you have to operate on that assumption.

The Chair: Solomon is not in the chair. Any other comments to this point of order?

Mr Bartolucci: Again, nothing personal, because that's the last thing I'd ever want this to be understood as, but clearly—I think Lisa is trying to get a legal interpretation here, and so we're just going to fill in time while she gets this legal interpretation—I believe that once the vote is commenced, regardless of what happens before, the vote has to proceed.

The Chair: Mr Shea, on the same point of order or a new one?

Mr Shea: It may be slightly different. I must confess that my experience in other committees may very well be different from this, where the Chairman normally would canvass the committee: Are they ready to vote, are they ready to take the sections and so forth? Unless I was dozing at the time, and I was not, I didn't hear that. We were suddenly into a final vote, and I was not ready because indeed I wanted to make some amendments as well. I am perplexed by the procedure, and I would think it appropriate—I do take what the member is saying with great seriousness, because he's quite right: In the usual manner, once you have started into the vote, you stay with the vote. I don't disagree with that. That is the procedure.

I think the issue before us is, did we start into the vote in error? That's the issue before us, and I think some are saying that we were waiting to make amendments, didn't even get into that or the final debate on the substantiveness. We just barely heard what the Monarchist League had to offer us, and then no chance to engage in the committee discussions.

With that in mind, it is my point of order, with all due delicateness, that you may have just been a little precipitous in bringing us to that vote. I applaud your diligence and speed, but I certainly would hope you might reconsider that and that members might allow us a chance to debate this bill with some more detail.

1750

The Chair: Thank you, Mr Shea. I would say again that the Chair was in error in moving to the vote without specifically requesting whether there were amendments. Given the fact that some members of the committee have indicated an interest in moving amendments, I think it's only fair that the Chair admit his error and that we go back to allowing the amendments and the discussion on the amendments to take place. That's my ruling.

Mr Shea: I accept the mea culpa.

Mr Gilchrist: To try and pick up wherever I left off, the point is that in this first section the Constitution Act specifies there will be one oath. It does it by saying, "The oath of allegiance is," and then goes on to specify the text. I believe the bill before us here today is extremely confusing. It makes no reference anywhere, directly or

indirectly, to the other oath, namely, the one that everyone has said orally around this table here today we still will continue to take. In fact, the very title of the bill, "An Act to provide for an Oath of Allegiance" etc, does not say "a second oath," it does not say "a supplementary oath," it does not say "an oath to clarify the fact we love Canada."

It is extremely confusing. On reading this the first time—and I admit, along with my colleague Mr Shea, that I am subbing in the committee here today and just coming up to speed, but I think that in one way has given me an advantage. Having simply read the text and not heard the preambles and the discussions that have gone on before this, there is no doubt that this is a very confusingly worded bill. Accordingly, I think it is critically important that there be reference in this bill to the oath that Mr Agostino and everyone else has said will still be a mandatory course of action for every member who wants to participate in the actions of the Legislative Assembly in Ontario. To do otherwise leaves this bill open to a lot of criticism and looking at it from Mr Agostino's perspective, a degree of confusion and a degree of conflict that would almost guarantee its defeat at third reading, again by people who will only look at the text and will not have had the opportunity to hear the oral debate that has gone on and probably will not have had an opportunity to read Hansard.

I think it is indisputable—it has been recognized by the Monarchist League—that every other jurisdiction in Canada, including the province of Quebec, I stress, hardly a bastion of monarchical support, has continued to utilize the oath which was subject to criticism by Mr Agostino at the time of his swearing in and which was the inspiration for the bill before us here today. I think that adds considerable weight to the argument that if every other jurisdiction, federal and provincial, recognizes the import, recognizes the authority, recognizes the pre-eminence of the clause in the Constitution Act, it is arrogant in the extreme to suggest that Ontario is the sole repository of greater constitutional wisdom than all the rest of the provinces and the federal government put together.

I think it is critical and it will have great bearing on the other sections that I bring forward in terms of a new section 2 that I will be proposing as an amendment. I hope to come back to—I know I really should keep my comments to section 1, but just as a means of explanation, to achieve the same aims and goals that Mr Agostino was outlining in his bill, namely, a very tacit undertaking that the members of this assembly do believe in the laws of the country, do believe in the importance of representing the people of Ontario and of Canada, but having said that, that the authority for the lawmaking we will do is derived from Queen Elizabeth II.

Along the lines of the suggestion made by our colleague Julia Munro, as is repeated in the submission by the Monarchist League, what really needs to occur is that the members being sworn in have a clear understanding of what that oath means, the significance of who the Queen is, what she represents, so that hopefully this debate will never come up again. We will be able to resolve once and for all the authority of the Queen we are referring to in the oath, the fact that she is the embodiment of the laws of this country, the fact that she is standing in the name of all the legislation we will pass, and obviously, therefore, it is appropriate that our allegiance be to her.

It is also important to note, as was also mentioned by the Monarchist League, that we can't serve two masters. We clearly, if we have sworn allegiance to Queen Elizabeth II, cannot then turn around and swear allegiance to someone or something else. Even if you were to argue that the jurisdictions which that second person or second group represents are somehow distinct from those represented by Queen Elizabeth, it really does not follow in the context of what this oath is all about.

I may be wrong in my interpretation, but the inspiration for the amendment I am proposing is very much the fact that I take this as my promise that while wearing the hat of lawmaker in the province of Ontario, I recognize the authority and the legitimacy of Queen Elizabeth II as the ultimate arbiter, the ultimate decision-maker for any of the actions that are taken in this House.

It is important to remember that at no time does the Premier of this province sign off on a bill. Our authority is merely to make recommendations to the Lieutenant Governor, who is sitting in this building as a representative of Her Majesty, and it is he who then signs off and gives royal assent to the bill. The legislation has no meaning, it has no import, it has no force of law until the Queen or her representative has signed off on that bill. I think it is, as I mentioned earlier, arrogant in the extreme to suggest that it is appropriate or legitimate for us to be either proposing a second oath of allegiance or in any way bringing confusion or conflict to the existing oath that is already required of every member.

Seeing that it is 6 o'clock, Mr Chair, I move adjournment.

The Chair: It being 6 of the clock, this committee stands adjourned until next Wednesday, April 17.

Mr Agostino: On a point of order, Mr Chairman: Can you adjourn in the middle of an amendment before a vote has taken place?

The Chair: It being 6 of the clock, the committee stands adjourned until April 17 at 3:30.

The committee adjourned at 1758.

CONTENTS

Wednesday 10 April 1996

Legislative Assembly Oath of Allegiance Act, 1995, Bill 22, <i>Mr Agostino</i> / Loi de 1995 sur le serment d'allégeance des députés à l'Assemblée législative, projet de loi 22, <i>M. Agostino</i>	M-115
Dominic Agostino, MPP	M-115
Monarchist League of Canada	M-121
Garry Toffoli, chairman, Ontario division	
Dr Richard Toporoski, Toronto branch	

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Gilchrist, Steve (Scarborough East/-Est PC) for Mr Johnson

Martin, Tony (Sault Ste Marie ND) for Mr Silipo

Shea, Derwyn (High Park-Swansea PC) for Mr Grimmett

Clerk / Greffière: Lisa Freedman

Staff / Personnel:

Peter Sibenik, procedural research clerk, Office of the Clerk

CARON
XC20
-220

Government
Publications



M-13

M-13

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 17 April 1996

Journal des débats (Hansard)

Mercredi 17 avril 1996



Standing committee on the Legislative Assembly

Legislative Assembly
Oath of Allegiance Act, 1995

Order and decorum

Conduct of business

Comité permanent de l'Assemblée législative

Loi de 1995 sur
le serment d'allégeance
des députés à l'Assemblée législative

Ordre et décorum

Direction des travaux

Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 17 April 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 17 avril 1996

*The committee met at 1633 in room 228.*LEGISLATIVE ASSEMBLY
OATH OF ALLEGIANCE ACT, 1995
LOI DE 1995
SUR LE SERMENT D'ALLÉGEANCE
DES DÉPUTÉS À L'ASSEMBLÉE LÉGISLATIVE

Consideration of Bill 22, An Act to provide for an Oath of Allegiance for the Members of the Legislative Assembly / Projet de loi 22, Loi prévoyant le serment d'allégeance pour les députés à l'Assemblée législative.

The Chair (Mr Ted Arnott): This meeting of the standing committee on the Legislative Assembly will be called to order. When we sat last week, we were dealing with the private member's bill in the name of Mr Agostino, Bill 22, An Act to provide for an Oath of Allegiance for the Members of the Legislative Assembly.

We were considering an amendment that was put forward by Mr Gilchrist verbally; it had not been presented to the clerk through the normal procedure in writing. Mr Gilchrist is not here at the moment to put forward his amendment. Are there any members of the Conservative Party who would like to speak to that amendment? How shall we handle this?

Mr Tony Clement (Brampton South): Can you read out the amendment again, just for the purposes of clarity?

Mr Dominic Agostino (Hamilton East): On a point of order, Mr Chairman: Can you rule on this? The amendment had not been properly put forward. Therefore, it hadn't been properly moved. Therefore, I would argue that it is not in front of this committee to be debated at this point.

The Chair: Technically, I think you're correct. In the absence of Mr Gilchrist at the present time—I understand he's coming, but I really have no alternative but to agree with you and rule in your favour.

Are there any other amendments any members of the committee would like to put forward to the bill? Seeing none we shall proceed with the vote on the bill.

Mr Clement: Is there any further discussion we would have on this, or is it just on amendments?

The Chair: There are no amendments. We've had extensive discussion.

Mr Clement: On the main motion.

The Chair: Yes.

Shall sections 1, 2 and 3 of the bill carry?

Interjection: Recorded vote.

Ayes

Grimmett, Ramsay, Silipo, Stewart.

Nays

Clement.

The Chair: The motion is carried.

Shall the title of the bill carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Agreed.

The bill is reported to the House.

Congratulations, Mr Agostino.

ORDER AND DECORUM

The Chair: The next item of business is a report of the subcommittee:

"Your subcommittee met on Tuesday, April 16, 1996, and agreed to the following:

"(1) Upon the completion of Bill 22, An Act to provide for an Oath of Allegiance for the Members of the Legislative Assembly, the committee will commence consideration of the issue of order and decorum."

Would someone like to move the adoption of the subcommittee report?

Mr Clement: I would so move. Just for the point of clarity, I would like to also suggest that the reference here about order and decorum is with relation to Mr O'Toole's original motion, so it does encompass all aspects of the original motion that had been discussed by this committee, that was moved by Mr O'Toole.

The Chair: I don't see any problem with your suggestion. You've moved the adoption of the report. All in favour of the adoption of the subcommittee report? The motion is carried.

Mr O'Toole is not here at the present time. Is he coming? Does anyone know? No one knows. I think we should at this time then turn to our researcher, who has presented materials to all members of the committee for help on how we're going to discuss this issue. Mr Peter Sibenik.

Mr Peter Sibenik: If you have your briefing binder before you, it contains a list of materials in a broad subject area of order and decorum. It also contains a little bit of information on naming and suspension of members specifically.

I'm going to begin my briefing by giving you a bit of a historical overview on naming in Ontario. The rule we have right now in standing order 15 has been around for quite a while; I'd say it's been there for about 25 years. I'm still checking into changes that might have happened before 1971 and I'll be in a position to report to you by the next time we meet on this particular issue.

The number of members who have been named in the House has increased over the course of that time period.

If you turn to tab 7 in the briefing binder, you'll see a breakdown I have over the number of members who have been named in the Legislative Assembly of Ontario in the period from 1970 to 1996, or to the part of 1996 we're at at present. You'll see that in the 1970s there were 11 members who were named, in the next decade 31, and in this decade to date there have been 28. The average number of members named per year has increased, as you see in the figures that are beside the figures I have just mentioned. Looking at the more recent history of the number of members who have been named, you can see what the breakdown is from 1990 to 1996.

In the course of the 1970s, the typical reason for a member being named was the fact that the member refused to resume his seat. However, from the 1980s forward it was more the case that members were named because of their refusal to retract unparliamentary language, and that still is the most common reason why members are named in the House.

Various Speakers have handled the issue of order and decorum in different ways. Standing order 15 represents, for want of a better phrase, the heavy hand. It's usually preceded by a number of warnings, and the Speaker generally likes to use less ominous tools to ensure that order is restored in the House. I think it's fair to say that the Speaker uses the least severe measures to restore order. Typically, a Speaker in previous parliaments has used a warning, a caution, perhaps even an encouragement to a member or to the House generally to use, for example, temperate language or for the member to cooperate in the restoration of order. There are many such instances. When you have some time you can take a look at tab 4; there are any number of examples in that particular tab as to how the Speaker has used warnings and cautions.

1640

Different Speakers have also said that differences between members should be resolved by members through negotiations or perhaps through rule changes. One of the precedents in tab 4 indicates as much. Speakers have said that all members are honourable, and that's one of the cornerstones of our parliamentary system, that a member should not accuse another member of lying. It's, in a sense, the other side of the coin to the privilege of freedom of speech that members enjoy.

Speakers have indicated, with respect to unparliamentary language, that there's no list of parliamentary or unparliamentary terms. It just doesn't go that way. It's in the judgement of the Chair to determine whether something is in or out of order with respect to unparliamentary language or other matters.

The last vehicle a Speaker might use in order to restore order in the chamber is to adjourn the House for grave disorder, and we have a standing order on that.

I should indicate that order and decorum issues have been considered by this standing committee in previous parliaments. With respect to the 35th Parliament, the standing committee on the Legislative Assembly looked into the entire matter of electronic devices being used in the chamber and in committees. It looked into the issue of sexist and demeaning language. It also looked into the issue of the wearing of buttons and ribbons and the dress

code. All of these instances are recorded in tab 5 of the briefing materials.

I might indicate that on the occasion of this standing committee's investigation on that particular issue—that is, with respect to buttons and dress code—Speaker Warner appeared before that particular committee and indicated at that time that there were several reasons for the elevated level of tensions in the House. First of all, he indicated that there was a large turnover of members in recent parliaments, resulting in a loss of continuity and stability. The second thing he said is that being an MPP these days is now a full-time job, so that members are more completely involved in the parliamentary system than they were a few generations ago. The third thing he indicated is that the presence of television and an audience of perhaps 400,000 may have changed some of the dynamics within the chamber.

He made several other suggestions and observations as well. He indicated that perhaps a member who is named should be required to apologize the next day in the House. Perhaps that's a way of getting around certain difficulties. He indicated that the best discipline is self-discipline as well, and he went so far as to suggest that the caucuses could exercise a little bit more authority in that regard. He indicated that he personally was a little reluctant to name members, and that's because he was afraid of what might happen afterwards: members rising up on a point of order after a certain member had been named, saying: "Look, you forgot about all these other members whose behaviour has been on the same level as the member you named. Why didn't you name those members as well?" He felt it was a bit of a slippery slope and it's better to let the caucuses impose this self-discipline than to engage in wholesale naming of members.

He also indicated that it's perhaps better to address the root problem; that is, how members can be more productive. He suggested that perhaps if the committee system were strengthened, members would feel they were more in tune with what was happening with respect to our parliamentary system.

I might indicate that in the course of the 1980s, we had a fairly active procedural affairs committee. That is the predecessor committee to this particular committee. I'm sure that particular committee had a few investigations it made; however, I'm just beginning to get into that. In a sense, I'm working backwards, and I'll be in a better position to look into that the next time we meet.

I've also got a section in this particular binder on other parliamentary jurisdictions. Different jurisdictions have different approaches to how they handle members who refuse to be brought to order. In some jurisdictions, a Speaker will issue a simple order to withdraw to a particular member, without naming the member. In other jurisdictions, there might be a fine attendant to a member being named. In the course of the committee's discussion on a previous occasion, I understand Saskatchewan was mentioned, that it's \$155 a day, that kind of fine. There could also be a suspension for a specified period if the use of force is required. In addition, Westminster and Australia have an interesting system whereby if a member is named on a subsequent occasion, the member receives a longer suspension. I believe in one of these jurisdictions

the first suspension is five days; it increases to 20 days and then longer if it's a repeat offence in the same year. There are different approaches there that have been taken in other jurisdictions.

As I've indicated, quite a bit more briefing material could be assembled on practically every topic in the list of issues I've attached in tab 1 of the briefing binder. Abstaining from voting is of particular interest, I noticed, in the December 13, 1995, motion that was passed in this particular committee, and that is another issue I will be taking a look at.

That is the extent of my briefing here. Are there any questions members have on the materials?

Mr David Tilson (Dufferin-Peel): You mentioned other jurisdictions. If someone is named in this jurisdiction, in Ontario—I'm looking at standing order 15—essentially there are two situations. One is that if a member is named, hopefully that member will voluntarily leave the Legislature, leave the assembly. The second situation, looking at clause (d), is where the Speaker calls "to the attention of the House that force is necessary in order to compel obedience and any member named by the Speaker as having refused to obey his or her direction shall...."

I suppose if the member simply becomes unruly or refuses to do something or refuses to leave, the Speaker could then declare to the attention of the House that force is necessary. Is there any provision in the standing orders that enables a Speaker to order the Sergeant at Arms to physically remove the member from the House? I don't think there is.

Mr Sibenik: In Ontario? No, there is no explicit provision.

Mr Tilson: All the Speaker can do is to make a declaration to the House that force is necessary, but that's it. The declaration is there. What happens then? Is it possible that a motion could be made that the person be physically removed? I don't know whether this has ever occurred, that a member is forcibly removed from the Legislature.

Mr Sibenik: I can't recall in recent memory where that has happened.

1650

Mr Tilson: I can't either. Are there statistics or standing orders from other jurisdictions about where a member becomes unruly, for whatever reason, and simply won't abide by the ruling of the Speaker, either verbally or physically or whatever, or where the member has been named and simply refuses to leave? I'm interested in what other jurisdictions do with that.

Mr Sibenik: I know that in British Columbia there was a situation where the staff of the Sergeant at Arms physically removed a member from the chamber. In that particular incident, I think it was the Deputy Speaker who ordered the member to withdraw from the House for the balance of the day, and when the member refused to leave the Deputy Speaker ordered the sergeant to remove the member, and two of the staff of the sergeant then dragged the member out of the chamber. Because force was needed, the member was automatically suspended for the rest of the session. That happened in 1983.

There are very, very few instances in which this has happened in parliamentary jurisdictions. The difficulty is

that their standing orders are phrased in a different way from ours. In Westminster, for example, I know it's happened, and in British Columbia. I believe it happened once in the House of Representatives in Australia, but I'm not sure. We can put together a list of these various instances and attach the standing orders.

Mr Tilson: It would be reprehensible if someone had to be physically removed from the House, for whatever reason. Hopefully that would never happen. I'm asking questions almost knowing the answer. I can't recall anywhere where this has happened in Canada. You told me something I didn't know about British Columbia.

Do you believe the Speaker in the province of Ontario has the jurisdiction to request the Sergeant at Arms to physically remove a member from the Legislature?

Mr Sibenik: I don't know the answer to that. The only person who would know is the Speaker in a proper case. It's difficult trying to interpret the standing orders, given the fact that we don't really have much precedent to work on apart from the December 1995 occurrence. It's a difficult issue to address, there are so few instances on which to work.

Mr Tilson: Unless there's something in Erskine May or I don't know what for the purposes of keeping order, I doubt very much whether the Speaker can order anybody to touch a member. I don't know. It almost may require some sort of legal interpretation. I don't even know whether it's the jurisdiction of this House or this assembly to pass such an order to physically—I mean, if that's the case, then that ends that.

I'm really interested in whether it has happened in any other jurisdiction, and you've mentioned British Columbia, but more important, can it happen? Can a rule be instituted that says the Speaker can order the Sergeant at Arms and indeed security, if necessary, to physically remove someone from the House?

Mr Sibenik: I can't recall that there is any kind of standing order in the Commonwealth parliamentary jurisdiction that is phrased in the terms in which you have phrased it. Usually it's just a question of a standing order that outlines the duties of the Sergeant at Arms, often in a general way, and outlines the duties of the Speaker to preserve order and decorum in the House, in a general way again. I can only say that in terms of specific wording along the lines you have suggested, I don't think I've come across one case.

Mr Tilson: As to clause (d), which says, "The Speaker shall call to the attention...that force is necessary," has this section ever been imposed by any Speaker in Ontario?

Mr Sibenik: This particular provision has not really been interpreted in recent memory, to my knowledge, before the December 1995 incident. It was a very unusual situation that occurred on that occasion.

Mr Tilson: Do you have any recommendation to this committee from your research about whether there should be a standing order that says a Speaker can physically order the removal of a member?

Mr Sibenik: No, I don't really have any recommendation. It's a sensitive issue, and I'm sure members on both sides will have views with respect to that.

Mr Tilson: Indeed it's a very difficult question.

Mr Sibenik: As I said in the course of the briefing, that is not very often relied upon. The Speaker likes in most cases to rely on the least severe measures to restore order, and when something like this happens it creates a hard case. There's a famous legal expression, "Hard cases make bad law." I don't know if that has any bearing here, but it puts presiding officers in a very difficult position.

Mr Tilson: My final comment is that I interpret clause (d) as that the Speaker is elected to keep order in the House but he or she is coming to the House and saying, "I can't do anything." Obviously, the only way to keep order is to have force, and I don't think any Speaker wants to get into that. It's a tough question.

The Chair: I recognize Mr Clement.

Mr Clement: I have some specific questions. I think the answers will promote more discussion and dialogue from all members of this committee, so I hope I'm not restricting myself today or in the future if I just ask a few preliminary questions relating to this.

The Chair: Not at all.

CONDUCT OF BUSINESS

Mrs Margaret Marland (Mississauga South): Mr Chair, I have a question on a point of order. I was just waiting for Mr Tilson to finish because I thought you had my name down.

The Chair: I'm sorry, Mrs Marland. I had Mr Clement ahead of you.

Mrs Marland: That's fine. Please excuse me a second, Tony. The point of order I would like to raise with you, Mr Chairman, is that I understand you have, as per the agenda for this afternoon, already voted on Bill 22.

The Chair: We have.

Mrs Marland: It's also my understanding that a quorum was not present at that time and that nobody recognized that a quorum wasn't present.

The Chair: No one brought that matter to the attention of the Chair. That's correct.

Mrs Marland: My concern is also that the matter of the standing orders having a provision of 20 minutes to call members was not brought to the attention of the Chair either.

The Chair: That is correct.

Mrs Marland: My point of order is that I know there has been precedent where a vote has been taken a second time in a committee because the first vote was taken without quorum present and it wasn't brought to the attention of the Chair.

The Chair: Does anyone wish to speak to this point of order?

Mr Tony Silipo (Dovercourt): I have to confess that I don't know, first of all, what the provisions are around quorum. Is there a fixed number for committees?

The Chair: I understand eight is a quorum for a committee of this size, since we've got our larger committees. Mrs Marland is quite correct that the Chair was not reminded that a quorum was not present. No member of the committee suggested that a 20-minute recess be taken to allow the absent members to come to the committee, so the vote was held and Mr Agostino's bill carried.

Mr Steve Gilchrist (Scarborough East): Mr Chair, just a clarification on this point of order: Can a meeting be convened without a quorum present?

The Chair: I think the convention is that if three members, one representing each party, are present and the Chair, the meeting can be started. I don't know if that's the letter of the Legislative Assembly Act, but that's the convention around this place. We waited about five minutes after routine proceedings were completed, and there was a request by a member of the Legislature to initiate the meeting, and we started.

1700

Mrs Marland: That's the reason I'm raising the point. I believe that you did not have a quorum, because routine proceedings had not been completed.

Mr Frank Miclash (Kenora): They were.

Mr Silipo: Mr Chair, on this point of order: As you consider your ruling, I'd suggest to you that you really have no choice but to simply let the proceedings continue for a couple of reasons.

First of all, we were clearly beyond routine proceedings. Mr Bartolucci, who now is here in the committee, was actually speaking on Bill 34 at the time that we were dealing with the vote, so we were clearly in the Legislature way beyond routine proceedings; we were into orders of the day. The committee, on a timely basis, was very much within its purview to be meeting and therefore dealing with the business at hand.

Second, there were clearly representatives from each of the three caucuses here including, as I understand it, Mr Clement, who is the government whip on this committee, and there were no objections. I don't know what the number of members here was. I don't know whether or not there was technically a majority of members here, but I would suggest to you that's irrelevant and that we proceeded with all good faith. There was no objection from any members of the committee. A quorum was seen by the Chair, because he called the committee to order and began proceedings. Unless someone objects at the time, you can't go back and undo it.

I would suggest, Mr Chair, that's really the only ruling you could give. We proceeded in good faith, with a quorum being seen by the Chair at the time, no one objected from the three caucuses fully represented here and we dealt with the business that was on the agenda.

Mr Tilson: On the same point of order Mr Chairman: The difficulty, Mr Silipo, is that the Chair has now admitted, it appears, that there was not a quorum, that he didn't see a quorum. I'm saying this with due respect, for whatever reason the proceedings continued, but the Chair is now admitting that there was not a quorum. If there's not a quorum, anything that has happened since that time is null and void, because we can't sit. It's as simple as that.

If the Chair now acknowledges that perhaps there was an error for whatever reason, and I don't intend to get into a debate with the Chairman because I always lose those, that there was not a quorum, and he has—I believe the Chair has admitted that.

The Chair: I don't believe I said it quite that explicitly, Mr Tilson, although in my recollection, and given the fact that I think we have the names of the people who

were here, there may not have been a quorum present—unfortunately, the convention of this place is that if it is not brought to the attention of the Chair, it is not normal for the Chair to declare a lack of a quorum.

Mr Tilson: That may be but the difficulty is, I believe that you have now admitted it. At least that is my interpretation of what you have just said.

The Chair: The clerk has brought to my attention standing order 117(c):

“If at any time during the meeting of a standing or select committee the Chair of the committee is advised by a member of the committee that a quorum is not present, the Chair shall, upon determining that a quorum is not present, suspend the proceedings of the committee.”

So the two conditions are (a) the quorum not being present, and (b) its being brought to the attention of the Chair by a member of the committee.

Mr Tilson: The difficulty is that you know, Mr Chairman, for these proceedings to continue to proceed, there must be a quorum. I believe you have admitted that at the time there was not a quorum and you, in your role of Chair, with due respect, shouldn't call the meeting unless there is a quorum. You have now admitted that you knew there was not a quorum, therefore I would submit to you for your ruling—I guess the point of order is Mrs Marland's, but I'm supporting her—that because of that, these proceedings are null and void because you knew at the time there was not a quorum, and if you knew that, we cannot conduct these proceedings.

Mr Gilchrist: On the same point of order, Mr Chair: Recounting, in my capacity as Chair of another committee, my clerk has always advised me that I could not start a meeting until a quorum was present. If you can show me that is not the convention, then I certainly will defer, but I must suggest that it is both the practice in public accounts, where I am not the Chair but I am the subcommittee rep, and it has absolutely been the convention on every day that resources development has met, on the explicit undertakings of our clerk, that I could not call the meeting to order until there was a simple majority present. There were many days that, accordingly, the meeting did not start on schedule as a result of the non-attendance of eight members, including myself.

Mrs Marland: Just to continue with my point of order, Mr Chair, I witnessed Mr Silipo coming across the floor of the House this afternoon, but first of all, let me back up. I'm not a regular member of this committee, as you are aware. I don't know if you are, Mr Silipo, but obviously I'm not. I was watching the Chair in terms of when the members in the chamber were going to be leaving to start this committee. I knew that routine proceedings were delayed, as all of us know, because at one point there was a 30-minute bell delay. I said to the Chairman, “We won't be starting until routine proceedings are complete,” and at some point I recall you coming to the middle of the aisle in the chamber and saying to the Chairman, “Come on, let's get going,” and at that point we were not in routine proceedings, you will agree.

Mr Silipo: Yes, but so what? We were beyond routine proceedings, Mr Chair, when the committee started to meet.

Mrs Marland: Just follow my point. At that point or shortly within that, you walked out the door of the chamber and shortly after the Chairman left too, but because we still were not in routine proceedings and because there was a reason that I was staying there, which was to see Bill Pr56 be introduced as a committee report, which is a bill on graphic designers for Ontario, I wanted to remain in the House. That's why I'm so sure about the timing of this and of the point that I'm making. You may well say that Mr Bartolucci was on the television monitor, but I would like you to know that from the time routine proceedings started, I proceeded directly here because I wanted to be in the House for the graphic designers bill, and I proceeded directly here to find that a vote had taken place.

Mr Chairman, I want to make this point to you because it's going to be your ruling. There is a difference between convention and our standing orders. Convention is how things can be done with agreement of all parties. Convention often is, with committees, that they start without a quorum, but I have never known a vote to be taken without a quorum. The very fact that the clerk has recorded who voted on this motion indicates or confirms that there was not a quorum present. The starting of the meeting without a quorum for the sake of debate or hearing a deputation, which is the more common thing that we're concerned about—not keeping deputations waiting who are scheduled to appear before our committees—is entirely different from taking a vote without a quorum. When the clerk records who was present for that vote, and it is confirmed now that there was not a quorum, I suggest to you, Mr Chairman, that the procedure of taking the vote on Bill 22 was out of order and I ask you to retake that vote.

Mr R. Gary Stewart (Peterborough): Just a clarification on the point of order, Mr Chairman: Is the Chairman deemed to be part of this committee?

The Chair: For the purposes of a quorum?

Mr Stewart: Yes.

The Chair: I believe that's correct.

Mr Stewart: Then the number on this committee is 13. Am I right or am I wrong?

The Chair: Apparently 14 at the present time.

Mr Stewart: It is 14, and you must have over 50% to have the quorum? Do I understand that?

The Chair: Eight members of the committee would constitute a quorum.

Mr Stewart: Thank you. I just wanted clarification.
1710

Mr Silipo: On the same point, Mr Chair: I understand the concerns that the government members are expressing. However, I would just make this point in addition to the points I made earlier. I think in a case like this you have no choice but to follow the standing orders.

I am one who has a great deal of respect for the conventions of this place. I've made arguments in favour of those conventions dictating our behaviour in committees and in the Legislature itself, but where there is a specific standing order, I think you would agree that the standing order guides the decisions of the Chair and/or of the Speaker, as the case may be.

The pertinent points in this instance are the provisions of the standing order that you referred to earlier which have two aspects to them. The first is that the Chair sees or doesn't see a quorum and proceeds to have the committee meet if he or she sees a quorum, and secondly, if a member brings to the Chair's attention that a quorum isn't present, then certain things follow; the Chair is supposed to verify whether or not there is a quorum etc.

In this instance, Mr Chair, the first thing happened. You saw a quorum, you proceeded to have the committee go on with its business and no one called it otherwise. Whatever the numbers were, the point is that the meeting proceeded in good faith with no one objecting, all three parties legitimately represented, the whips from each party present, at least from two of the parties—I don't think Mr Miclash was present—the government whip present. You could have raised, if you felt that a quorum wasn't present, that a quorum wasn't present.

That wasn't done by him nor by any other members of the committee, and I suggest to you that the committee proceeded in good faith, and legitimately so. You can't undo that now, so I would ask you just to rule that the committee proceeded properly, and let's get on with the business at hand.

The Chair: I will hear all members of the committee who wish to speak to this point of order before ruling.

Mr Clement: I agree with Mr Silipo that the standing orders should trump any conventions. I don't have them in front of me but I can tell you what the confusion was in my mind, just for your benefit. I am a participant in another committee, the standing committee on general government. Their convention seemed to be that the Chair would call the meeting to order when there were members of all three parties represented and that number was in excess of a quorum. That was the rule I was used to, and in my role as whip, as Mr Silipo has termed me, that was the rule under which I thought this committee had also been run. I now know, to my chagrin, that perhaps you have a different convention, but given the clash of conventions on the different committees in which we participate as members, whatever the standing order is, that should trump.

Mr Tilson: I don't agree with the issue about calling a meeting when there is no quorum, particularly if the Chair knows that. But assuming that is correct because of convention or other reasons, you then come to the issue of voting on a bill or a resolution. You are then into a different situation. It is one thing to call a meeting knowing that there is no quorum—I repeat that I don't agree with that, particularly if you know that there is no quorum—and I'm repeating what Mrs Marland said: It's quite something else to call the vote. My point to you is, supporting Mrs Marland's point of order, that I don't believe you had the jurisdiction as Chair to call the vote, knowing that there was no quorum.

The Chair: Any other comments relating to this point of order?

Mrs Marland: Yes. I have a question, if I may, to the clerk. Could you give me the names of the people who voted on that motion, please?

Clerk of the Committee (Ms Lisa Freedman): I can get it.

The Chair: It would have been recorded by Hansard. It will take a couple of minutes to get the names.

Mrs Marland: I can wait for that. The other question I have to the clerk is about the variance. I'll wait till you finish because it's hard to listen to two.

We have a very experienced clerk who's been on any number of committees and has observed any number of Chairs. It is true that there are Chairs who at the beginning of hearings will say to members of a committee—and as I say, I particularly am thinking of committees that are booked every 15 or 20 minutes with deputations; we did that on the finance and economic affairs committee recently—"Can we have all-party agreement that, because we have such a tight schedule, we will see a quorum and start on time?" We all agreed to that. It was discussed up front and that was established.

Procedurally, that is very different. For one thing, you're not doing clause-by-clause and passing motions, or as has taken place this afternoon, the passage of a bill. If it isn't established up front and if you haven't said to this committee, "Is there agreement that I see a quorum when there isn't?" then I'm suggesting to you that for the passage of a bill, which is essential business of the committee and is the responsibility of the members of that committee, when I see that difference, I think unless you've preset the stage for that to happen, then it is out of order, and that is the reason I raise it.

I'm simply asking that the vote be taken in a procedurally correct way.

Mr Miclash: I go back to Mrs Marland's point. When we first met, was there any discussion about going ahead when all three parties are represented? I know that quite often happens.

Mrs Marland: Not with votes, though, Frank. Never with votes.

Mr Miclash: I can't say that. Still, if I were in that position, I certainly would have called for a 20-minute recess or identified the quorum to the Chair. I really don't know, but that's what I would be interested in finding out.

The Chair: Are there any other comments relating to this point of order? Seeing none, perhaps a way to resolve this impasse would be to see if there is unanimous consent on this committee to revert back to previous to the vote so that we can take the vote again. Is there unanimous consent that that take place?

Mr Silipo: No. Mr Chair, I think you have to give us a ruling.

Mr Clement: Could I just ask a question, Mr Chair? I'm not familiar enough with procedure to know the answer to this, but are any motions in order to reconsider the previous question?

The Chair: We would have to recess to look into that to see whether or not that could happen, instead of something extraordinary.

Mrs Marland: I would move that—

Interjection: How long do they need?

Mrs Marland: Yes. How long do you need to research that?

The Chair: Five minutes in total.

Mrs Marland: I move that on that clock, we reconvene at 5:30.

Interjection: Can I have a point of order?

The Chair: No. There's a motion for a five-minute recess.

The committee recessed from 1720 to 1730.

The Chair: I will call the committee back into session. I've had an opportunity to reflect upon this momentous point of order.

Mr Tilson: Mr Chair, before you make your ruling, could I make one more submission to you?

The Chair: Go ahead.

Mr Tilson: Standing order 117(a), (b), (c) and (d) seem to deal with this whole subject of quorum, and (a) talks about what a quorum is: a majority is a quorum. Clause (b) says, "Any committee may authorize the Chair to hold meetings to receive evidence when a quorum is not present." So, Mr Chairman, there obviously was evidence at the outset, your own evidence, that a quorum was not present, and you did not receive, I would submit, authorization from the committee—

Interjection.

Mr Tilson: Well, that's what the standing order says—that you did not receive authority from the committee to proceed. Standing order 117(c)—that's the one that you have been referring to—talks about something quite different. It talks about suspending the proceeding and that you may then adjourn it. But I would submit that the position you should be looking at is clause (b), and I'll repeat that: "Any committee may authorize the Chair to hold meetings to receive evidence when a quorum is not present." Therefore, Mr Chairman, because the committee did not give you such authorization you therefore did not have the authority to proceed.

Mr Rick Bartolucci (Sudbury): Mr Chair, we took a five-minute recess so that you could ponder the evidence and come back with a ruling. Now when you're about to make the ruling, we hear some more information. Does that mean we're going to have another 15-minute recess?

The Chair: It's not my intention to call another recess.

Mr Bartolucci: You received a five-minute recess to make a ruling. That ruling should have been done immediately upon reconvening the meeting. This last minute—and that's open subject to very much personal interpretation and I could interpret that completely differently.

The Chair: It may very well be the case and the Chair will rule after he's heard all members of the committee relating to this point of order.

Mr Silipo: Mr Chair, specifically on the point Mr Tilson has made, which is the additional point that he's thrown into this, I would just say to you that standing order 117(b) doesn't apply in this case because it talks about instances where the committee is receiving evidence.

I would just go back to the two points I made before, and I believe you reiterated, which were that the Chair is able to see a quorum present and unless there is an objection raised by members of the committee to point out otherwise and determine otherwise, there is deemed to be a quorum. I would suggest to you there is deemed to have been a quorum at the time we dealt with the bill and at the time we voted, and nothing can change that. You can't go back in time and change what happened

because what happened was done under a quorum being deemed to be present, both by you as the Chair and by no members of the committee raising any points to the contrary.

The Chair: Thank you, Mr Silipo. All members have had sufficient opportunity to present their concerns related to this point of order, so I will now rule. I am absolutely certain that routine proceedings had been completed. We waited here for approximately five minutes. A member of the Legislature requested that the committee start its proceedings. There was representation from each of the three caucuses present at that time.

The lack of the quorum was not brought to the attention of the Chair, although it may very well be correct that there was not a sufficient quorum in the committee room at the time, but my experience as a member of the Legislature for the last six years tells me that committee meetings are often called to order and the committee meeting started when there's representation from all three parties.

It is not up to the Chair to determine whether or not a quorum is present, call that to the attention of the committee, stop the committee's proceedings without a member of the committee bringing it to the attention of the Chair. There was no request for a 20-minute recess, which is also the option that members of the committee may have if they wish to delay a vote until all members of the committee can be present for that vote. I therefore rule that the vote on Mr Agostino's private member's bill was in fact in order.

Now we move back to what we were doing, which is a discussion of—

Mr Gilchrist: On a separate point of order, Mr Chairman.

The Chair: Mr Clement.

Mr Clement: I think I was next on the questions list.

The Chair: Is it a point of order or what were you asking?

Mr Clement: No, I think I had the floor once this discussion was over. It's not a point of order, it's a motion to reconsider.

The Chair: A motion for me to reconsider my ruling?

Mr Clement: No, a motion to reconsider the vote on Bill 22.

The Chair: The only way to reconsider, which I already tried to ascertain, is if there was unanimous consent to have that vote over again.

I'll ask again: Is there unanimous consent? There is no unanimous consent. The vote stands.

Mr Clement: Can I proceed then with my comments respecting—

Mr Gilchrist: I have a point.

The Chair: On a new point of order or the same point of order?

Mr Gilchrist: New point of order, Mr Chair: I'd just like to draw to your attention that it is a fact that amendments can be introduced orally or in writing, and it is my understanding that they must, though, be in writing prior to the vote. Any check of Hansard will show that 20 minutes prior to the end of—

The Chair: What exactly are you referring to, Mr Gilchrist?

Mr Gilchrist: I was just about to say—20 minutes prior to the end of our last meeting, I introduced an amendment, top of page M-133, “I would amend by deleting the word ‘schedule,’ and put in the words ‘Constitution Act, 1967, as amended.’”

We then spent 20 minutes debating that amendment. If it was out of order, I would submit that is the time someone should have ruled on that. The amendment was handed in, in writing, to the clerk at 3:30 today, well before the committee actually started hearing, as we have heard. I am then at a loss to understand why that question would not have been put before a vote on the bill itself. It is not up to either the clerk or the Chair, I would submit, to arbitrarily decide at the end of the debate that somehow because of the fact it wasn't in writing last Wednesday, on April 10, that this is now not worthy of being put to a vote. I would submit to you that the failure to vote on the amendment which is right there in Hansard means that you cannot proceed to a vote on the bill itself, and there is no doubt—

The Chair: I'm sorry. Mr Gilchrist, I think you're speaking to the ruling that I've made.

Mr Gilchrist: No, sir. That ruling had to do with quorum, and this has nothing to do with quorum. This has to do with—

The Chair: My ruling was that the vote on Mr Agostino's bill was in fact in order.

Mr Gilchrist: I think I am introducing something totally different. Obviously, no point of discussion raised by Ms Marland in subsequent comments dealt with the amendment, so I would submit this is a new point of order. You may in fact have the same ruling. I'm quite prepared if that is the case, but I would like to know on what basis that amendment, which was in writing prior to the vote and submitted to the clerk, would not have been considered a valid amendment and the question put on that amendment before the vote on the bill itself, which is of course the normal procedure.

The Chair: By way of response, Mr Gilchrist, I would remind you, I believe all members of the committee received a memo dated April 11, requesting that all amendments to Bill 22 be submitted to the clerk by Wednesday April 17, at 3:30 pm, in writing, and—

Clerk of the Committee: By Tuesday, at 12 noon.

The Chair: I'm sorry, Tuesday at 12 noon, which was yesterday at 12 noon, and—

1740

Mr Gilchrist: It is my understanding it was faxed to the clerk's office on Monday afternoon. The clerk tells me she personally did not see it. I would be pleased to go down and see if we have a fax—if you want to stand in recess again, and I will get the fax transmission record showing that it was sent Monday afternoon. But I'm not going to dwell on that. Even then, whether or not the Chair has asked for that, it is the convention and it is the standing orders, I believe, that it just has to be in writing prior to the vote. It obviously was here. There's no dispute that it wasn't handed to the clerk at 3:30 this afternoon, and the meeting didn't start for a full hour after that, so I don't see how we can be debating whether it was not in writing prior to the vote.

The Chair: Mr Gilchrist, as you know, amendments must be put in writing to be effective and to be reason-

able in terms of discussion on the bill. Your amendment was out of order because it was not in writing and it was not in the proper format. It was also out of order because it was contrary to the principle of the bill, which makes it out of order anyway. I fail to see how—I know what you're getting at. I think you're suggesting that you disagree with my initial ruling. I would put to you, are you suggesting that my ruling is inaccurate or incorrect?

Mr Gilchrist: I think it is an extremely dangerous precedent, Mr Chair, to suggest that because we had not voted—and I had not introduced amendments 2, 3 and 4. To look at an amendment that says delete the word “schedule” and add the words “Constitution Act, 1867, as amended”—all the discussion, including that from Mr Agostino, had recognized that the existing oath will continue to be an oath.

I really do fail to see how the Chair would have the authority to decide at that point—forget anything else that may be following in my proposed amendments; amendments are voted on one at a time. I really believe it is an extremely dangerous precedent for the Chair to prejudice the import and the significance of something that minor. I have never seen that in all of the submissions that have been made before committees in the nine months I've been here, but I defer to your authority in this meeting. I believe you are also trying to establish a new precedent that amendments should be in writing prior to debate. I do not believe that is either the convention or the rule in this House.

The Chair: On what exactly do you want the Chair to rule?

Mr Gilchrist: On whether it was appropriate for there not to have been a vote on the amendment, which had been introduced prior to a vote on the bill. If you rule that there had to be a vote on the amendment, obviously you cannot have proceeded to the vote on the entire bill.

Mr Bartolucci: You've already ruled on it.

The Chair: We were in the stage of a vote, and that was not in writing for us here, in a formal sense, Mr Gilchrist.

Mr Gilchrist: My final comment to that is, you are suggesting this was not handed to the clerk prior to the vote?

The Chair: While the committee was sitting, that's—the committee was not sitting. I understand you've suggested you handed it to—it was sent up here at 3:30?

Mr Gilchrist: It was handed to the clerk; it was in her possession. I took it back five minutes after the vote. This pile of 14 copies of my amendments was in the hands of the clerk. It is obviously the clerk who hands things out. It would be totally inappropriate for me to have dropped it at every spot. It was in the hands of the clerk, and I absolutely recognize there would have been a problem when we got to amendment number 2, based on a typo in preparing this. But there was no comment made about typos in section 1, and I have a great difficulty in being prejudged on amendments that aren't even on the floor yet. Only that one amendment, and there was no contrary position taken by the Chair last Wednesday about the appropriateness of making an oral amendment.

The Chair: Mr Gilchrist, I have already ruled that the vote was in order. You appear to be trying to establish

that the vote was not in order; I think that's what you're getting at.

Mr Gilchrist: No, I'm trying to establish that there should have been a vote on this amendment. What flows from that is up to someone else to decide, Mr Chair.

Mr Bartolucci: It has already been decided.

Mrs Marland: On the same point—

Mr Gilchrist: It may very well ultimately turn out that way, Mr Bartolucci.

The Chair: This is a different point of order. Mrs Marland.

Mrs Marland: On the same point that Mr Gilchrist has raised—and I recognize we are dealing with a different point of order—I was not at this committee last week when he placed his amendment, but obviously his amendment was placed with sufficient time and has been supplemented with it in writing. The clerk had it in writing before you started voting on this bill earlier today, but you voted on the bill without voting on an amendment that you had—not you technically, but that the committee had technically, because the clerk had it. So you voted on the bill, which is actually out of order if you had an amendment which you hadn't taken the vote on first.

Mr John Hastings (Etobicoke-Rexdale): Mr Chairman, my concern relates to the situation—

Mr Silipo: You ruled on this.

Interjections.

Mr Hastings: My point of order relates to the concern that, now that this is the situation that stands, I would like to receive a research analysis from the clerks' office as to whether this kind of decision, made in these sets of circumstances, in the future, can be applied as a precedent for other committees, select or standing, of this Legislature. I would like to receive that when we meet next time, whenever that is, because this situation has some very pervasive implications for other committees that we deal with—public accounts for one, I would

think. I can see a set of circumstances evolving in which certain people were out of the room, somebody went to get something, and they ended up making a decision about a particular item in public accounts—using that as an example. I would request, at the next meeting, that we get a full analysis on whether this sets a precedent or not and can be utilized as a precedent.

The Chair: Are there any other comments?

Mr Tilson: Mr Chairman, you commented that you have ruled on this, but I emphasize to you that you've ruled on issues—

The Chair: I ruled that Mr Agostino's vote was in order, based on the points of order that have been raised and that the members have put forward, yes.

Mr Tilson: With respect, I believe you ruled against Mrs Marland's point of order.

The Chair: That's right.

Mr Tilson: That's what you did.

The Chair: Yes.

Mr Tilson: But there is obviously now a new point of order dealing with an amendment.

The Chair: That's why I'm listening to it, Mr Tilson.

Mr Tilson: I just wanted to clarify.

Mr Silipo: Mr Chair, I suggest to you that really this is not another point of order, because you have dealt with the question of—

The Chair: Mr Silipo, I have already ruled that it is another point of order.

Mr Silipo: Fine. I'm suggesting to you, sir, that therefore, if you want to take that interpretation, your ruling can be no different on this point than it was on the previous one, because this was part and parcel of the issue surrounding the bill we were dealing with.

The Chair: It may very well be, but it's a different point of order. As I said last week, lacking the wisdom of Solomon, I will need some time to consider this ruling.

The committee adjourned at 1748.

CONTENTS

Wednesday 17 April 1996

Legislative Assembly Oath of Allegiance Act, 1995, Bill 22, <i>Mr Agostino</i> / Loi de 1995 sur le serment d'allégeance des députés à l'Assemblée législative, projet de loi 22, <i>M. Agostino</i>	M-135
Order and decorum	M-135
Conduct of business	M-138

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

Boushy, Dave (Sarnia PC)

Cooke, David S. (Windsor-Riverside ND)

DeFaria, Carl (Mississauga East / -Est PC)

Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

*Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Clement, Tony (Brampton South / -Sud PC) for Mr DeFaria

Gilchrist, Steve (Scarborough East / -Est PC) for Mr Froese

Marland, Margaret (Mississauga South / -Sud PC) for Mr Boushy

Ramsay, David (Timiskaming L) for Mr Morin

Tilson, David (Dufferin-Peel PC) for Mr Johnson

Also taking part / Autres participants et participantes:

Agostino, Dominic (Hamilton East / -Est L)

Clerk / Greffière: Lisa Freedman

Staff / Personnel:

Sybille Fillion, legislative counsel

Peter Sibenik, procedural research clerk, Office of the Clerk

CARON
XC 20
- 220



M-14

M-14

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 24 April 1996

Journal des débats (Hansard)

Mercredi 24 avril 1996

Standing committee on the Legislative Assembly

Conduct of business

Order and decorum

Comité permanent de l'Assemblée législative

Direction des travaux

Ordre et décorum



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 24 April 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 24 avril 1996

The committee met at 1534 in room 228.

CONDUCT OF BUSINESS

The Vice-Chair (Mr John Hastings): I'd like to make a statement with respect to the conclusion of last week's situation. At the conclusion of the meeting last week, Mr Gilchrist raised a point of order with respect to the admissibility of the amendments. The issue was ruled on by the Chair at the beginning of the meeting in response to Mr Agostino's point of order on the same issue. I'd like to reiterate the ruling, which was that the amendment was not properly moved by Mr Gilchrist and was never therefore formally before the committee.

ORDER AND DECORUM

The Vice-Chair: Now we'll start on the next item, which is chapter 2 of the order and decorum. Go ahead, Peter.

Mr Peter Sibenik: Since our last meeting last week, I've had an opportunity to prepare a bit more material. It's in volume 2; there's a second volume of the briefing materials. You should have both volume 1 and volume 2 before you, and if you don't, perhaps the committee clerk could assist you in that regard.

Just very briefly I'll indicate what volume 2 contains. The first thing it contains are some transcripts of older meetings of the Legislative Assembly committee. Back then it was called the standing committee on procedural affairs, but it handled the kinds of responsibilities that this committee has. In particular, there are transcripts of meetings from 1982 and 1984, both of those dealing with the issue of order and decorum and in particular naming of members.

The 1982 meeting—and the transcript of that is at tab 11—was basically about what happens if no one is prepared to move the motion that is indicated in standing order 15(b), and that is the part of the standing order that deals with the situation if the Speaker finds that the offence is of a more serious nature. That particular part of the standing order says, "But if the matter appears to the Speaker to be of a more serious nature, the Speaker shall put the question on motion being made, no amendment, adjournment or debate being allowed, 'that such member be suspended from the service of the House,' such suspension being for any time stated in the motion not exceeding 14 calendar days."

One of the members indicated at the time: "What happens if no one is prepared to move the motion? The Speaker is put in an invidious position basically." It's an unfortunate kind of position, but the committee decided

not to recommend any kind of change. It was just one single meeting held in one morning in 1982.

In 1984, the procedural affairs committee held three meetings and that series of meetings dealt with a concern on the part of one of the opposition members that a member who is named by the Speaker and then ordered to withdraw from the chamber almost gets off scot-free in the sense that the member comes back into the chamber the next day, particularly if that member does not withdraw or apologize.

To one of the members of the House that was unacceptable. The House referred the entire issue to the procedural affairs committee and there was a discussion back and forth as to what exactly should happen. Should there be a change that would require the member who was ordered to leave the chamber to withdraw or to apologize for the unparliamentary remark as a precondition to his or her getting his or her seat the next day or whenever the member came back into the chamber? Again, there was no change that was indicated by the committee after a series of discussions.

The other materials in there, tab 13, deal with a series of Speakers' rulings. Again, these are older rulings. The more recent rulings are in the first volume of the briefing materials, and this particular tab has some Speakers' rulings dating back to the 1970s and early 1980s.

There are references to a number of members who had been named. There's a good exposition in these rulings as to exactly the ambit of the Speaker's powers. For the most part, these rulings tend to suggest that the Speaker's power to discipline a member is contained within standing order 15, or what is now standing order 15, and as I indicated the previous day, that really has remained unchanged for the better part of a few decades, certainly up to 1970.

1540

There are a few rulings that suggest something otherwise. They are, as some members indicated, anomalous rulings. Basically what happened in 1980, for example, is that the Speaker did not name a particular member for making an unparliamentary remark, but what the Speaker did was refuse to see that member. In fact, the Speaker refused to see that member for a period of six months, and it was only after the member withdrew the unparliamentary remark that the member was allowed to speak, to be recognized in the chamber. Not only that, the Speaker indicated as much in a formal ruling, indicated to the House that he was going to not see a particular member, and he asked all the other occupants of the chair and in addition the presiding officers of the committees not to see this particular member. The member did eventually relent, but as I say, it took six months.

That ruling was probably controversial. It was never done before and it has never been done since. Usually, the Speaker will name a particular member if the Speaker wishes to discipline that member for refusing to withdraw unparliamentary remarks. The thing in that case, however, is that the Speaker's ruling that he would not see the member was not preceded by a ruling that he had named the particular member. So there is that anomaly, if that is the proper word.

The other material, tabs 15 through to 17, were also of some concern to members of this committee, and in fact the December 13, 1995, motion of this committee indicated that the committee was interested in finding out whether it was required for a member who was present in the chamber to vote, whether the member, for example, could abstain, and the answer is somewhat conflicting.

There are some older rulings that indicate the Speaker can in a sense say that a particular member who purports to abstain will be deemed to have voted in the affirmative. In another case, he was deemed to have voted in the negative. Those two rulings are older and it's been fairly consistent since then that Speakers have indicated that members must vote, that there is no option.

It's a rather mixed bag. I took a look at the rules in some of the other provinces and other Commonwealth jurisdictions as well. Some of the rules are phrased in terms of members being required to vote if they are in the chamber; others give the member the option that the member can abstain if he or she wishes to.

Mrs Margaret Marland (Mississauga South): When you say those two examples are very old, are you talking about 50 years ago?

Mr Sibenik: No, I wouldn't say that old. I'd say from the early 1960s and early 1970s. I'm a little younger perhaps than some of the members around the table. That's what I mean; 1969 and 1973 are the actual dates of those two rulings that I'm mentioning here.

I'd say that in terms of the majors, that is to say Ottawa and Westminster, they allow their members to abstain, if members are interested in that.

Mrs Marland: Are there other provinces also?

Mr Sibenik: Yes, there are other provinces as well. We have a full set of the rules in here as to which provinces allow abstaining and which don't.

Mr David Tilson (Dufferin-Peel): Who are they?

Mr Sibenik: Well, let's see here. It will be tab 16, I think, if you can give me a moment.

Alberta requires members to vote. British Columbia—it's not clear from British Columbia what the rule there is. With respect to Manitoba, members are required to vote. Yes, for Quebec it's indicated here that members may abstain in that particular case—their standing order 228. The next one would be New Brunswick. They allow abstentions, if you see their standing order 62(4). So Quebec and New Brunswick certainly.

The next one, Newfoundland—I believe they must vote. Members must vote there according to their standing order 83. In the Legislative Assembly of the Northwest Territories, abstentions are allowed, so there's a third jurisdiction that does allow abstentions. It's not clear from the House of Assembly of Nova Scotia. Prince Edward Island—again that one perhaps is not quite clear as to whether abstentions are allowed.

Saskatchewan, "Upon a division, the yeas and the nays shall not be entered upon the minutes unless demanded by two members." Probably again that one really doesn't indicate exactly what the situation is there. Then there's the Yukon:

"Each member present shall vote unless he or she has a direct pecuniary interest.

"Upon a division, the yeas and nays shall be entered in the Votes and Proceedings."

It doesn't indicate anything about abstentions.

Mr Tilson: And Ottawa?

Mr Sibenik: Ottawa does allow abstentions. In addition, Westminster allows abstentions as well. So there must be probably at least five or six jurisdictions in the Commonwealth jurisdictions that I've canvassed that do allow.

There's probably just one qualification I could make: In these jurisdictions that allow a member to abstain, if they don't vote yes, no or the fact that they abstain, they would probably still be named. It's just that they have three options instead of two. That's my understanding as well.

Mr Tilson: And they are?

Mr Sibenik: The options are yes, no or abstain.

Mr Tilson: Oh, I'm sorry.

Mr Sibenik: That's what I meant by that.

The Vice-Chair: Questions?

Mr Tony Clement (Brampton South): Mr Chairman, may I be permitted to ask Peter some questions? I got lost in the shuffle last week when we bounced around the oath of allegiance issue and I had some notes based on his description of things from last week. May I be permitted to ask questions relating to last week's submissions as well?

The Vice-Chair: You mean regarding our ruling?

Mr Clement: No, no.

The Vice-Chair: Sure, go ahead.

Mr Clement: I know it's hard to remember, but we actually did have a presentation from Peter last week as well. I wrote some questions about it, but I never got called on the speakers' list because events intervened.

The Vice-Chair: Okay, you're on. Fire away.

Mr Clement: Thank you. I think we're both going to be struggling with the exact context of your comments, but if you can cast your mind back to last week, I think you referenced the fact that in Australia there were extra penalties on members if they were named a second time within a period of time. I wasn't able to find that in the tabs. Do you recollect your comment in that regard?

1550

Mr Sibenik: I believe it was Australia, and in addition Westminster, where there was a situation that if there was a second or a third kind of an offence, if a member had been named on more than one occasion, the penalty tended to increase. I'm just looking through my notes here on that. I certainly did indicate that at page M-136 of the committee Hansard from the previous day. I indicated that it was either Australia or Westminster. I find, on reviewing my notes, that in fact it is Westminster.

After the Speaker names a member, the Speaker forthwith puts the question on motion that such member

is suspended from the service of the House. The period of suspension is five days if it's the first offence, it's 20 days if it's the second offence and it's an indeterminate period of time if it's a third offence. That is the order there: five, 20 and indeterminate, depending upon whether it's the first, second, third or subsequent offence.

Mr Clement: I had a specific question relating to standing order 15(b), which I believe is the 14-day suspension rule, which I understand is upon a resolution of the House, as I recall. My research of your tabs seems to indicate that really is kind of a dead letter, because it really has not been applied in the Legislature of Ontario. Is that a correct interpretation?

Mr Sibenik: I believe you're referring to the second part of standing order 15(b), and that is my recollection as well. I can't recall that in recent memory ever having been invoked.

Mr David S. Cooke (Windsor-Riverside): But then you're so much younger than anyone else in this room.

Mr Sibenik: In addition, I must say I've looked in our precedents collection, which is considerably older than any member in this room, and I haven't found anything in there.

Mrs Marland: That's a good recovery.

Mr Clement: I am going to read tab 12, but it seemed to me that one of the topics was unparliamentary language as well. It's titled "Parliamentary Language," but I suspect what they are dealing with is unparliamentary language. From your knowledge of that committee meeting, did they come to any set conclusions as to how to moderate language in the chamber?

Mr Sibenik: No, they left it hanging up in the air. Like I say, that was a series of three meetings that was at the insistence of a member who was either at that time or shortly afterwards the dean of the House. There was more in the way of a round table discussion, the pros and cons of the particular approach and the fact that it's important on the part of all members to ensure that order and decorum is maintained. That kind of a discussion was forthcoming. There were certain members who showed up in the course of those particular meetings, members who in their history in the Legislature had been named. There was a discussion as to what is the motivation for members to engage in unparliamentary remarks and whether it was in order to receive some press afterwards, to go outside the chamber doors and make some comments to the press. I recall this particular member in the transcript saying, "No, that wasn't the reason at all," but some members disagreed. There was that kind of exchange, if you will.

Mr Clement: I'll certainly have a good read of it. I think, Peter, you also did that very handy syllabus of the list of issues, which I thank you for.

Mr Sibenik: Yes.

Mr Clement: That one was dated January 10, 1996.

Mr Sibenik: Yes.

Mr Clement: I'm also interested in points of privilege and points of order. As a person who was ruled out of order by the Deputy Speaker recently for the improper use of a point of privilege, I'm just curious to know the ground rules that have existed previously as to points of order and points of privilege. I guess to expand the issue

somewhat, or even to focus the issue, there's also the question of repetition with points of order and points of privilege and whether there is a well-grounded series of precedents in this chamber on that subject. I'd be interested in that particular topic.

Mr Sibenik: I confess that although it was the subject of the December 13 motion, I was a little puzzled as to exactly what that reference meant. I was waiting to get a little bit more direction from the committee as to what exactly it wanted to receive from me on the matter of points of privilege and points of order. It was indicated in that particular motion in a very un-descriptive way, so I was waiting to hear back on that.

Off the top of my head, I would say we have some precedents in the area of repetition. I couldn't tell you offhand how many there have been and what they have said.

Mr Clement: No, I'm not asking that for today. It seems to me, and this is just my opinion, but some of the problems in points of order and points of privilege occur because of being a novice. There have been a lot of new members in the Legislature, myself among them, and we probably don't use those parliamentary points the way we should all of the time.

Then you've got the branch of points of order and points of privilege that is legitimately used by the opposition to focus in on a particular breach that they feel has been engendered by the government of the day. It seems to me that you could probably subdivide that into classes where the opposition has a legitimate point, legitimately expressed, and then there may be a line that is eventually drawn by a Speaker in previous rulings where they say: "Okay, you've made your point. I will rule on that point. I now want to get back to the business at hand." I just wanted to know whether that is a completely subjective judgement or whether there are precedents in that regard.

Mr Sibenik: I'm sure we do have something in the way of precedents, although I must say we don't classify them according to legitimate versus legitimate. Whether there's a point of order or a point of privilege or a *prima facie* case of privilege is a question for the Speaker.

Mr Clement: Very subjective, yes.

Mr Sibenik: The Speaker has to allow some kind of amplification on the part of the member who is raising a point of order or a point of privilege. It's a question call, I would say, as to when the Speaker has heard enough information on a point of order or a point of privilege.

Yes, there is some repetition, I would say. Over the course of years or decades, I'm sure the same point of order has been mentioned the previous day or the previous year or the previous decade. That could be the very nature of raising points of order and points of privilege.

Mr Clement: Sure. Just some background eventually on that topic would be helpful to me as a member.

If I still have the floor, I was interested in item 8 on your syllabus, if I can call it that, "Impact of television on order and decorum."

1600

Mrs Marland: David and I can speak to that, right? We were here before.

Mr Clement: You were here before. It seems to me that you can make an intuitive case that there has been a

simultaneous, greater concern over order and decorum with the length of time that television has been around, but whether those two are just symptoms or whether one is the cause of the other, I don't have any academic background in that area. Do you know of any studies, masters' theses or what not on this topic?

Mr Sibenik: I do recall that there have been certain articles in parliamentary journals on the topic of television. We have a report from 1986, I believe, of one of the committees of this Legislature that took a look into the entire issue.

Mrs Marland: I think it was this committee.

Mr Sibenik: Yes. In addition, this particular committee in its terms of reference does have the responsibility to take a look at broadcasting from time to time, so I'm sure that if I looked back over the course of the past 10 years, I could produce some of the transcripts, committee Hansards and that report as well.

Mrs Marland: If I could just interject to be helpful, it was this committee—I was a member of it at the time—that investigated, if we went to televising the proceedings, how best to do that. Gilles, were you on that committee?

Mr Gilles E. Morin (Carleton East): Yes, I was on it too.

Mrs Marland: We went to a number of provincial and state assemblies to see how they did it and what their rules were. We even investigated how they physically did it because we had a great challenge with the height of our ceiling and technically and that kind of stuff. We did a very thorough investigation before we made the recommendation to introduce it.

Mr Morin: Some members were opposed to it.

Mrs Marland: That's right. Actually, the discussion wasn't how to proceed; it was whether to proceed based on information that this committee of all-party members would gather from its investigation, so that is an interesting report. In hindsight, I wonder if I would vote the same way today that I voted 10 years ago.

Mr Clement: Certainly I'd be interested if there is an academic discussion of this issue. I'd be prepared to read it. I think it might be interesting. I'm not saying that we should turn back the clock on that but maybe there are some other creative things we can do.

I also noticed your item 14, in which you say, "Witnesses that the committee might want to hear from." I just remind my colleagues that you had I guess four suggestions of potential witnesses who might assist us in our deliberations on this issue. I'm quite willing to hear from any or all of those persons.

In the first go-round, if I might say so, Mr Chairman, what we should probably accomplish—I've got my own thoughts as a member of the Legislature as to issues of importance and decorum. Obviously Mr O'Toole, who was the mover of the original motion, has his thoughts. I'm just very anxious to hear from all the members of this committee on both sides of the table. I'm quite hopeful that once we have that discussion—airing from all sides, not just from the government side, I want to emphasize—perhaps we can collaboratively come up with some solutions that will be helpful to all of us. With that, I would like to cede the floor.

Mr Tony Silipo (Dovercourt): Mr Cooke and I were half joking about moving adjournment, but I'm very

tempted to do that. I have to ask sincerely, what are we doing here? We've asked Legislative research staff to do a fair amount of work in bringing us together two volumes now of materials dealing with various aspects of rules and precedents and order and decorum. I legitimately ask you, as Chair of the committee, and Mr O'Toole, as the mover of the original motion on this, to either give us some sense of what people are interested in doing or, if not, let's just adjourn and go and do something more useful.

Mr John O'Toole (Durham East): If I may.

The Vice-Chair: I've been waiting. Your points are well taken. We have a motion made to this committee by Mr O'Toole from last December 13, I believe is the date. I think it is an appropriate time to deal with this motion one way or the other, since we've had all this research done by the research officer of the committee. I think we have to proceed with dealing with some of it or disposing of it, one way or the other. Your remarks are well noted. Let's proceed, then.

Mr O'Toole: I agree that there has been considerable time spent on this issue. Substantially, there are two particular areas that could easily be expedited dealing with amendments to the standing orders, or recommendations from this committee: One is the whole issue of naming a member and some actions that could be taken and the other is the vote.

In the discussion, I suspect even in the early discussion, there were suggestions made by other members of the committee in a really honest attempt to improve the standing orders and the conducting of the business of the House on behalf of the people of Ontario. I don't want to defer to further debate, but M. Morin made several suggestions in the early discussions that as Deputy Speaker in the House he supported, or appeared to support, that the intention of the motion was to avoid unnecessary and frivolous activities in the House and give the Speaker some authority to move conclusively.

We could move the thing right now—let's get it out of here—but I felt there was a fair amount of resistance from that side.

The Vice-Chair: Do we have a motion on the floor, Mr O'Toole?

Mr O'Toole: We're still talking, in my view, on the original motion.

The Vice-Chair: Is it precisely your motion from—

Mr O'Toole: Back from December. It was supposed to be dealt with long ago.

Mr Silipo: With all due respect, sir, the original motion just says let's look at these issues. All right, so we've had research staff do some work and bring us back lots of good information. I'd ask Mr O'Toole or someone from the government side, what are you intending to do? Do you want to change the rules? If so, do you have a motion? Do you want to give us some indication as to what you want to change it to so that we can discuss something? Simply to have a discussion about decorum and rules in a kind of vacuum, I'm not sure what purpose we're serving here.

Mrs Marland: I just want to ask Mr Silipo to look at—

The Vice-Chair: Excuse me, Mrs Marland. Mr Cooke was ahead of you.

Mrs Marland: On a point of order, Mr Chair: Mr Silipo has just said that we were only asked to review. Actually, the wording of the motion that I'm looking at from the December 13 Hansard of this committee says: "I move that the standing committee of the Legislative Assembly be authorized to review and report."

I don't want to start debating it, in fairness. I'm just asking you to look at the wording because it isn't just to review; it's to report. In order to do that, we've had the review by our research officer, and now I think we have to decide on reporting on this subject.

Mr Silipo: On a point of order, Mr Chair: I couldn't agree more with Mrs Marland on that. That's exactly the point I'm making. What do we want to report on? Do you simply want to report on the research that's been done? I'd be quite happy. We can ask legislative staff to put together a report and that will be fine; that will be the end of it.

If that's what you want to do, that's fine. If there's more to be done, I think we need to have some sense of what people are interested in doing. If not, let's go and do something else.

1610

The Vice-Chair: As Chairman, I'll give you some direction. My suggestion would be that members of the committee ought to be taking the review motion of last December and shaping it into specific motions as to what direction you want to give me so we can get on with a vote on whatever you have in that motion.

Mr Cooke: I think the committee is operating in a way that has never occurred around this place in the past. The information that's been pulled together is interesting but rule changes around this place, and Mrs Marland knows this, don't take place in the Legislative Assembly committee. They take place among the House leaders. That's where they're discussed. It's a very political thing.

We're not going to be able to analyse the rules and come to unanimous consent among the three parties about how the rules should be changed. That's just not how this place works. That's not even how I believe the government House leader would want to see the rules changed.

I think we're wasting time, because nothing is going to come out of here that is going to result in rule changes. I think that an attempt by government members to use the Legislative Assembly committee to promote rule changes as a result of something that happened in the House before—Mr Clement can ask for all the precedents he wants. I think he worked in Mr Harris's office when a lot of precedents on how points of order and points of privilege and introduction of private members' bills and all that stuff were abused and probably was part of the strategy team, when they were in third place, that developed some of those strategies, so we know some of the things around here.

The matter is that rules being put together are a very delicate, difficult issue. There is nothing that will bring this committee and the entire Legislature to a more screeching stop, halt, end than an attempt in this committee to change the rules. With that in mind, because I think Mrs Marland wants a report, I would move that

volume 1 and volume 2 be reported to the House and that we dispense with this issue.

The Vice-Chair: On Mr Cooke's motion, Mrs Marland.

Mrs Marland: Your experience in this place, Mr Cooke, would indicate that the motion you have moved does not do justice to your own experience. It would be absolutely absurd to move these two volumes as a report from this committee. You know full well that reports to the Legislature always have a conclusion and recommendations.

Mr Cooke: Not true.

Mrs Marland: Then you're going to have to cite some examples, because you also made a statement that this committee has never made recommendations for rule changes. I would beg to differ with you on that issue also.

Mr Cooke: I said rule changes haven't been decided in this committee, and they're sure not going to be now.

Mrs Marland: You said that rule changes in the House have never come from this committee, and I would suggest to you that is not accurate. I would rather see rule changes decided by an all-party committee of the Legislature than by three individuals.

I have the greatest of respect for the three individuals who are House leaders in this place, the government House leader, the official opposition House leader and, interestingly enough, yourself as the third party House leader, but I think it is far too serious and onerous a responsibility to pass off to three people what will affect how 130 people function in our chamber or in our committee rooms.

Frankly, because I've had both the pleasure and the privilege of chairing committees, there are some things from time to time that I frankly think are as equally absurd in committee as in the chamber. One of those things that is clearly demonstrated is the inability of a member to abstain. Particularly, it manifests itself in committee when we're going through clause-by-clause of a bill and you're chairing the committee up here and someone cannot abstain from voting on a clause in a bill and in fact cannot even push their chair back from their desk—that member has to leave the room. They can't even sit in the public gallery seats. They have to absent themselves from the room in order not to be counted in that vote. Frankly, I think that's ridiculous.

Mr Cooke: You're elected to be counted.

Mrs Marland: It doesn't enhance the proceedings of the committee, nor does it give any of us—and when I served on the Legislative Assembly committee, I have found this with all of the members I have worked with, you're generally trying to do something that's representative for all members, and generally we try to make decisions that make this place work better.

Frankly, when I'm in a position where there have been sections of a bill, some parts I've agreed with and some I haven't, or some clauses for and against, when I first found out that you couldn't abstain—I must admit that coming from municipal politics where we used Robert's rules, we were allowed to abstain. I did not know until very recently, and it's been reconfirmed again today by Peter's research, that the very Parliament on which our

parliamentary procedure is based does permit abstentions. If Westminster permits abstentions, I don't know how we ever got around in our Legislature to not permitting abstentions during votes.

So for me, it would make eminent good sense for us to make a recommendation that abstentions be permitted. Isn't it interesting that we have other provinces that are more sophisticated than our great province of Ontario on that issue alone?

We now have a motion on the floor to report two volumes of research to the House. I would be terribly embarrassed to see that go from this committee—for what purpose? I mean, we would look like very lazy, non-committed members, in my humble opinion, to say: "Okay, we've got two volumes of research here. We've looked at this. Let's just report these two volumes to the House." Obviously at this point, I have no choice but to both speak and vote against the motion that is on the floor.

Mr Morin: Perhaps I could make a suggestion. First of all, I want to congratulate Peter for the excellent work he has done. I don't know if you realize that the amount of work in this is totally unreal. I've never seen that since I'm here. The research involved is just tremendous.

The suggestion I'd like to make is that each party reports to its own caucus what has been said, what is being proposed, and then either come back and come out with a format of some sort how we should approach that. But consult your caucus. We'll consult ours, because a lot of our own members are going to be interested in that.

1620

I would go further than that, perhaps later on. It's a heck of a big job. We could have—not procedures, we could have guidelines, because try to recall when you came here. I recall when I first came here in 1985, the direction I was given was not that elaborate what were the procedures of the House. First of all, there's a language that exists here in the House that you don't hear anywhere else in the province. It's like an insurance man, you know, when you talk about endowment, you talk about amortization. It's language which is not familiar to everyone.

If there were to be some guidelines, sort of a booklet, that each member is given—not procedures. Here's the way. Here are the parameters that you should abide by. Here are the things that are—it's a no-no. Here are the things that you know if you do this or if you say that, you're going to attract the ire of your colleagues, or the Speaker will bring you to order. Again, not procedures, a guideline book. Like, for instance, the farmers have a guideline book. They're not laws, they're not legislation.

Given that, here's the way you should behave in the House, and if you don't, here's what the procedure is. It's a big task but at least you would have something you could consult.

All of this discussion stems from the fact that Bill 26 came in, and people really got upset, people really got angry, and John came out and said, "Well, look, we can't go on that way." There were some political reasons why this was done, but at the same time, it attracted, it brought in another issue, another problem.

I think if we were to go back to our caucus, let our members know what came out here—and perhaps also I

look at David who has had a lot of experience; Jim Bradley has had a lot of experience; your House leader has had a lot of experience, let them discuss together what is the right approach, what approach do we take. Because let me tell you, if we pursue that here in committee too far, we're going to get angry. We're going to say things we'll regret. So why not just take a breather? Let people know what it's all about; let's discuss it, and let's come back. Let's give some real support to John's motion and say, "Well, look, this is the way we're going to do it," then we all work at it, because the decisions we'll make today—you're in power today. Tomorrow you may not be in power, and we've got to be careful that we do not penalize each other and we can no longer move.

This is democracy. It's normal for people to get angry, to get carried away in issues they really believe in. But at the same time, it's got to be done with a certain decorum, respect of the House, dignity, and all of these things. This is the suggestion, Mr Chairman, I would make if it would be acceptable.

The Vice-Chair: Okay. Thank you M. Morin. Before we go any further with speakers, might I suggest then, Mr Cooke—I'm at your disposal—would you be prepared to withdraw your motion; we simply have the two reports go back to each caucus; we discuss it, and come back with a position for the next meeting of the Legislative Assembly committee next Wednesday or some time frame within it?

Mr Cooke: We need a little more time than that, maybe, but I'd be prepared—

The Vice-Chair: Two weeks? Say two weeks from today.

Mr Cooke: We have to get the schedule in front of our caucus, and there might be a lengthy discussion so we'll need to block off some time in caucus. But I'd be prepared to do that, as long as we're being given a few weeks to do it.

The Vice-Chair: All right. Let's go to the other speakers, I guess. Before, I had Mr Clement—you're the next speaker?

Mr Clement: I am. Let me first of all thank Mr Morin for his very wise remarks. I really think he put a lot of this in a wider context. I would like to say—I don't think I'm speaking out of turn—that the issue of decorum has come up in our caucus already. Just talking to my fellow members even informally, there are some strong views, particularly by those of us who are new to this chamber, about the comportment of all of us. I'm probably as bad as anyone in terms of how we comport ourselves and how that is conveyed and portrayed to the general public who are watching or listening in or in the public chambers.

We have had an ongoing consultation with our own caucus which, along with Peter's excellent report from last time, has animated me to have a couple of suggestions that I'd like to propose at some point in this process, perhaps sooner rather than later. They're my points of view, but they're based on some discussions with people who are either caucus members or people who have been watching this whole session and the previous session unfold.

Secondly, I would like to just say for the record, from my own perspective I've actually been more upset this

session than at the cessation of the previous session. I would like to put forward the argument that perhaps the decorum problems of the previous session were symptomatic of a wider problem. They weren't just focused in on a particular piece of legislation, but perhaps they were indicative of the times in which we live—and I'm trying to be fair to the opposition by saying that. I think you feel as strongly as you do, as much as I feel as strongly as I do, on the public policy issues that we face. So that's fair. But I think there are other, wider, systemic problems that have devolved over time that perhaps we might want to turn our minds to.

That's the context in which I find myself. I like very much the idea of guidelines, as well as set procedures, but in my own mind and based on my own speaking with individuals both in and outside of my caucus, I think there is a need for—I'll say it—some procedural changes. These are my points of view. I think if we as a group consult some more with our caucuses as well we can come up with a whole list of changes in either procedure or the way we do business that are important to our respective caucuses.

Quite frankly, in response to Mr Cooke and his motion, I think that although we are not the end point of that discussion—he is quite correct—nor would I want to usurp the power of the House leaders or the power of the chamber itself to be the end point of that, I think we can be a very useful beginning point of that discussion. I think that quite frankly is what our role is. The beginning point is not the House leaders per se, it is the caucus members who sit on this committee. The House leaders have a very integral part to play in this and they will in turn mould what we come up with and something of some sort will eventually appear in the House. But something has to get this process going perhaps and maybe our points of view will enlighten the House leaders.

Mr Cooke: That's because you think the process has to go on. The opposition doesn't necessarily agree with you.

Mr Clement: Yes, you're absolutely right. That's a good characterization of my point of view, that this process does have to go on, that we have something potentially positive to add to the process and that's what I would like to do.

In response to the original motion, I would also speak against it. In response to what Mr Morin has had to say, I encourage members opposite to consult with their caucuses. I could be talked into allowing that to take place, so that we could perhaps, if the members opposite feel very strongly about it, adjourn for today, but I think we have to have an ongoing discussion. It's not just a one-off discussion, so I really do think we have to meet next week and continue our discussions. I've got some thoughts, I know other members of my caucus have some thoughts, I'm sure you have some thoughts on this, so let's get those out on the table at some point and start discussing them, and maybe that will help focus the discussions in our respective caucuses as well.

1630

Mr Tilson: I'm surprised that the amendment by Mr Cooke was made at this particular time, before we've

really had an opportunity to properly debate the motion and individual members been given an opportunity to digest the material that's been presented to us. You've given us two volumes. One volume none of us has had a chance to look at because it was just given to us today. To simply adjourn the proceedings and report to the House on a volume that I haven't even read, I must say I can't see the merits of that.

I would say that I congratulate Mr O'Toole for bringing the motion forward at this time, particularly with the number of concerns that have come forward from the public who have watched these proceedings in the House on television, from teachers and students who see the proceedings from the public gallery. I personally can say I've had a number of letters from people in my constituency being very concerned about the conduct of members in the House, on all sides of the House.

That has not just gone in this session, it has gone on in the previous sessions, and in fact, tab 7 that you presented for us certainly outlines that the issue of members being named shows that we clearly have a problem with decorum. When you show the members being named from 1970 to 1996, this process of the Speaker having no control over certain members is on the increase and continues to be on the increase. Letters have come from different Speakers, from Speaker Warner and Speaker McLean, indicating concerns that have been addressed to him from members of the public.

The whole issue of decorum has become more and more apparent and to say that this committee shouldn't be looking at it—this committee most certainly has the jurisdiction to look at it and, with the problems we have, most certainly should look at it. There's the topic of members being named, there's the increase of remarks that are being made by speakers not through the Chair; in other words, comments that are not being in the third person and comments that aren't addressed to the Chair. Certainly the House of Commons, as I know, opposes that practice, and if members are interested in topics, that's a topic that could be raised.

The issue that came today, the topic of points of order during question period, we could discuss that type of topic. A member stood up—in fact, I think it was Mrs Marland stood up—and the question was whether that was the appropriate time to make a point of order or whether it should be after question period—the clock continues to run—the issue of points of order, whether that takes away time from question period. There is, quite frankly, the issue of legitimate questions of points of order, so that's an issue that needs to be dealt with.

There's the issue of challenges to Speaker's rulings and the rulings of Chairs. Once the Speaker and the Chair of a committee have made a ruling, those rulings should be adhered to. There seems to be some challenge of that. At one point a number of weeks ago, I can recall a debate, I couldn't believe it, a debate that seemed to develop on a Speaker's ruling. There is the issue that questions during question period should be legitimate questions involving the practices of the government and shouldn't become personal, and in some cases, I believe, not just during our government but the former government, can become very personal and sometimes outright nasty.

There's the issue of the dress code in the House. Need we discuss that topic? There is the issue of camera angles, the whole issue of camera angles on television.

Then of course there's the issue that developed prior to Christmas where one member of the House refused to vote and essentially brought the place to a standstill for whatever reason. The opposition would comment that it was another tool that they had to express a concern they had as to an action of the government and the government would make remarks back and forth and away we go, but that certainly is a topic. There's the issue of whether or not members should be allowed to abstain or whether they should be forced to vote or whatever and the respect of rulings from the Chair.

All of these topics are topics that haven't come forward in any formal type of motion, and they may or may not. I don't know how much time this committee wishes to spend on these topics, but all of them have been discussed by all members of this place at some time or other, informally or indeed formally. A member had a private member's hour—I can't remember whether it was last week or several weeks ago—on a topic which was never voted on, I might add, but it was an issue. It expressed a concern. So the concerns of members have been expressed from all sides of the House privately and formally in the House as to the concern of decorum in the House.

I must confess I don't have any problem of a committee debating these topics. I don't have a problem with individual caucuses meeting and discussing what their particular philosophy should be from each individual caucus, whether that comes from a caucus or an individual member, but I certainly don't have any problem of a committee such as this debating the various topics that I have listed and many of these have been dealt with in the research and some of them haven't been. It may well be that further items will have to be researched.

The last time of course we had rule changes, there was the inference of a backroom deal, and I say that with all due respect. The media wrote about it to a certain degree, of all of a sudden "a deal," and I put that in quotation marks. It was arranged between the House leaders of all three parties—in fact, I don't think it was a unanimous deal, if I recall—with respect to the change of the rules, and I can't remember what year it was; 1992 or 1993, I can't recall, but the rules were changed and that was by the three House leaders in consultation with their respective caucuses. That's perhaps fine, but there's nothing wrong with an all-party legislative committee discussing these topics in the open and getting reaction between members.

I'm obviously not in favour of the motion to report at this time. We have not had an opportunity to debate any of the issues that I have raised. Some of those issues have been mentioned by the research people, but there are a number of issues that haven't been raised at all and I would like to raise them.

If members are interested—they've been searching for topics to talk about—there are about half a dozen at least that I'm sure the committee would find interesting to discuss, and if they don't find it interesting to discuss, then woe on them when members of the public call up

and are concerned about decorum in this House and how we're doing business in this place.

Mr Silipo: First of all, can I be clear? My understanding was Mr Cooke indicated his willingness to withdraw his motion.

The Vice-Chair: I heard that.

Mr Silipo: That's been done. We then had Mr Morin's—I think someone characterized it—very wise suggestion as to how we should proceed on this issue, and I would just want to reiterate that as a suggestion as well. I think it would be very wise for us, having received this information, and I appreciate Mr Tilson's point that there may be other issues that he or others may want further research or information on. I think that's quite understandable.

1640

Also, I just want to say that I also would agree very much with the point that Mrs Marland made that it is useful, if there are going to be discussions about rule changes, that they also clearly involve all of us as MPPs and not just the three House leaders, but I have to also say that whenever there have been rule changes, my understanding has been that they've never happened in a vacuum. They've always happened as a result of discussions within each of the caucuses, certainly primarily through the House leaders but obviously always with reference back to the caucuses, and there's been agreement on some changes and disagreement on others.

The frustration I have with this issue—and I think we all would agree that the question of decorum and order in the House is something that concerns all of us whether we're in opposition or in government—is that I think that it's necessary for us as a committee to be useful in this process, to be a little clearer about what it is we want to tackle. With all due respect to my colleagues on the government side, I don't have a clear sense of what it is they are proposing to do. I have a clear sense of some concerns that have been raised, I hear those, so that's why—it was almost half facetious earlier, Mr Chair, but I think it was actually also serious when I made the point that if what we want to do is to simply relay the information—I understand the point about not doing it, simply sending the volumes, but if what we want to do is relay back to the House a sense of the information we have from research, that, in and of itself, I think, would be of some use in terms of giving us some comparison.

If there is a yearning for us to do something more specific, then I think that's something we can only deal with if we have at some point in front of us some specific proposals, and my serious advice, following on what Mr Morin has said, is that before that happens—I don't hear any of those specific proposals here, even from government members who have said they would like to see some changes; I haven't heard anyone come forward and say, "This is one change that I'm proposing we look at"—I would suggest very strongly, as Mr Morin suggested, that if people are interested in making some specific suggestions, that is something that would be useful for everyone's sake for us to do in some kind of an orderly fashion. That should be done by pausing at this point; reflecting on the information that we've received; if there's more information that we want

research staff to get, I would have no trouble with agreeing to whatever that is, that you want more research to be done, but then I think we do need a pause.

We do need to sort of go back to our respective caucuses, have some kind of a discussion around this whole issue, get some sense from that whether in fact our colleagues want us to pursue any of these areas in a more specific way and, if so, then it seems to me it would be wise for that discussion to take place also with our respective House leaders, and as a result of that, determine what the best route might be, because then there might be an accommodation found in terms of saying, "Yes, let's have this committee take a look at suggested rule changes in areas (a), (b), (c) and (d)," or "Let's have the House leaders have some discussion around that and bring forward some proposals we could look at.

I'm not sure what the best way is, but I don't think we're going to get there by simply continuing to talk in a general sense, which is what we're all doing right now, because all we're doing is expressing concerns about issues with nothing specific in front of us about whether we're prepared to do anything about them and, if so, what. For us to answer that, understanding that while there are a number of us here from all three caucuses, there are a whole bunch of other colleagues out there from all three parties who may or may not have been party to some of these discussions, and I think it would be wise, before we did anything further, for us to have that discussion with our respective caucuses.

I reiterate Mr Morin's suggestion that we just basically at this point pause, go back, reflect, talk with our caucuses, talk with our House leaders, and only after that has happened, with adequate time—a couple of weeks—then determine what next step should be taken.

Mrs Marland: Mr Chairman, you do not have a motion on the floor at this time, correct?

The Vice-Chair: Yes, we do. There are two things. I heard Mr Cooke make a motion that this stuff be reviewed and then shipped back to the assembly, reported back; and then, as we got into debate, I asked him specifically whether he would be prepared to consider withdrawing it or putting it aside, and that's when we got into whether to go back to the caucuses. But I would rule that we do have a motion on the floor, his motion, even though he indicated, I think in an informal sense, that he would withdraw. He didn't specifically say that—

Mrs Marland: I thought his—

Mr Silipo: I understood he was withdrawing.

The Vice-Chair: Okay, I had asked him that. All right, then—

Mrs Marland: If we don't have a motion on the floor, I would like to place a motion on the floor.

Interjections.

The Vice-Chair: No, I made a ruling that we did have a motion on the floor.

Mrs Marland: I'm down to speak and I'm asking—

Mr Tilson: On a point of order, Mr Chairman: What is the motion on the floor?

Mrs Marland: That's what I want to know.

The Vice-Chair: We can handle it this way. If I could get unanimous consent from all members of this committee we could have the motion set aside and then you can proceed with whatever motion you want.

Mr Clement: Mr Cooke's motion, Mr Chairman?

The Vice-Chair: Yes, if there's unanimous consent to postpone consideration of it.

Mr Rick Bartolucci (Sudbury): Mr Chair, I think, if my understanding is correct, Mr Cooke said he would withdraw his motion if there was concurrence around the table that we bring this back to the respective caucuses. Is that not correct, Mr Chair?

The Vice-Chair: Yes, that's true.

Mr Bartolucci: Then do have concurrence that we will bring this back to our respective—

Mr Steve Gilchrist (Scarborough East): You can't conditionally withdraw a motion. You have to withdraw it and then put a new motion forward saying—or Mr Morin would.

Mr Bartolucci: Mr Chair, I challenge that procedure because I believe that you can ask for concurrence before withdrawal of a motion.

The Vice-Chair: If there's unanimous consent.

Mr Bartolucci: Am I correct? Then maybe we can get a ruling from Lisa.

The Vice-Chair: If there is unanimous consent to postpone it, then that would put it aside and then proceed with—

Mrs Marland: Can't we do anything—

Mr O'Toole: Just put the question and defeat it.

Mr Clement: I don't feel comfortable with that, Mr Chairman.

Mrs Marland: I think I have the floor in trying to clarify where we are. First of all, can the motion be withdrawn when the person who moved it isn't here? If the answer to that is, "Yes, with unanimous consent," then the only thing we can—

The Vice-Chair: No, you can't. I'll let you answer it, Clerk.

Clerk of the Committee (Ms Lisa Freedman): The only person who can withdraw a motion is the person who moved the motion. What the committee can do by unanimous consent is postpone consideration of the motion. So the motion would not technically be withdrawn; it would still be before the committee and we would just move it out of the way for the time being. But in order to withdraw it, only Mr Cooke can withdraw it.

Mrs Marland: If there is unanimous consent, then you could accept another motion?

The Vice-Chair: If there's unanimous consent by members here. So I'll put the question: Is there unanimous consent to postpone Mr Cooke's motion—

Mrs Marland: Yes, we would agree to that.

The Vice-Chair: —which is to take both chapters, both reports, review them and report back today? That was the first motion.

Mrs Marland: We would agree to that.

The Vice-Chair: So the motion on the floor right now is, if there is unanimous consent of the members of this committee, postponed and put aside; then we can proceed with other motions.

Mr Silipo: Trying to be helpful, perhaps it would be useful if we could get some indication, either from Mrs Marland or someone on the government side, as to what would you intend to do if we agree to postpone that

motion. What do you have? There have been other suggestions made by Mr Morin, certainly that I've supported and I thought were being supported by Mr Clement. Let's try to get out of this wrangle.

The Vice-Chair: Yes. Mrs Marland?

Mrs Marland: I think this is sort of getting silly. It's getting into horse-trading, like, "I'm going to continue to withdraw my motion after I find out what your motion's going to be," and that's not the way we conduct business. I heard Mr Cooke say that he would be willing to withdraw his motion.

The Vice-Chair: Because I had asked him at that time.

Mrs Marland: That's right, you did.

Mr Bartolucci: You only heard half of what he said, Mr Chair. If that's all you heard, you only heard half.

The Vice-Chair: It would go to caucus, I said. Go ahead, Mrs Marland.

Mrs Marland: The point is, I don't think that I can conditionally place a motion, nor can I conditionally remove a motion. I think if Mr Cooke is removing his motion—better still, why don't we deal with the idea of simply setting aside his motion?

1650

Mr Silipo: Why don't you tell us what you want to do? That's what we've been asking all afternoon.

Mrs Marland: Okay. If you have clarified that you need unanimous consent—

The Vice-Chair: I do.

Mrs Marland: —then I'm going to call the question on his motion.

The Vice-Chair: Okay. This is a non-debatable motion. All those in favour of putting the question on Mr Cooke's motion that the report go back?

Mr Gilchrist: Mr Cooke's question?

The Vice-Chair: Yes. Those in favour?

Mr Clement: We're putting the question so we vote on—

The Vice-Chair: Yes. All those in favour of the question being now put? All those opposed? Carried.

Mr Cooke's motion is that reports 1 and 2 be reported to the House. Those in favour?

Mr Bartolucci: Before we take the vote, is there debate?

The Vice-Chair: No. Both elements are non-debatable. Those in favour of Mr Cooke's motion? Those opposed? Defeated.

Now we'll go back to where we were in the order of speakers. We left off with Mrs Marland. Did you have any further comments? You were interrupted, and I don't know whether you want to proceed. You may if you want to.

Mrs Marland: I might like to ask for five minutes to have a discussion about my motion with my colleagues.

The Vice-Chair: Okay.

Mrs Marland: It's five minutes to 5. If we could reconvene at 5, I can have had that discussion.

Mr Bartolucci: Mr Chair, before we break, did Mr Morin not have a motion on the table?

The Vice-Chair: Not specifically.

Mr Morin: It was a suggestion.

The Vice-Chair: He had made a suggestion but he hadn't actually put it in the form of a motion. That's still one route we could walk down.

I declare a five-minute recess. We'll be back here at 5.

The committee recessed from 1654 to 1658.

Mrs Marland: Mr Chairman, I think I have the floor.

The Vice-Chair: Yes, you do.

Mr Morin: Mr Chairman, we still have two members who are gone. Can we wait a few minutes?

Mr Gilchrist: I remember a certain incident involving Bill 26.

Mrs Marland: I think you'll be able to live with my motion. If you still want to call your members for the vote, we can do it then; you could still call for the members before the vote.

The Vice-Chair: Proceed.

Mrs Marland: The second volume of information that we have received this afternoon is very extensive. As Mr Tilson accurately and eloquently referred to it, it's not something that most of us, and certainly speaking for myself, wish to try to assimilate during a committee hearing. I feel that because of the research and the work that our researcher, Peter, has done on this very important subject of order and decorum in the House, I would like the opportunity to read this volume before I start to debate and make comments on all aspects relating to the list of issues that was compiled on January 10, 1996, which is also in our binders.

For that reason, I would like to move adjournment of the committee for today so that we can all consider the information we've been given this afternoon.

The Vice-Chair: All those in favour—

Mr Morin: Do you want to call in the members?

The Vice-Chair: Call in the members for this vote coming up.

Mrs Marland: Sorry, there's wording you have to use, M. Morin. You have to make a request to call in your members, and you request either five minutes or 20 minutes.

Mr Morin: I request to call in the members, Mr Chairman.

Mrs Marland: How much time do you need?

The Vice-Chair: Are you requesting 20 minutes, M. Morin?

Mr Morin: Sure.

The Vice-Chair: Okay. We'll reconvene at 5:25.

The committee recessed from 1701 to 1708.

The Vice-Chair: We have a motion on the floor to adjourn. All those in favour of the adjourning motion? Opposed? There being none, I declare it carried. This meeting is over until next Wednesday.

The committee adjourned at 1709.

CONTENTS

Wednesday 24 April 1996

Conduct of business	M-145
Order and decorum	M-145

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

Boushy, Dave (Sarnia PC)

*Cooke, David S. (Windsor-Riverside ND)

DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

*Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Clement, Tony (Brampton South / -Sud PC) for Mr DeFaria

Gilchrist, Steve (Scarborough East / -Est PC) for Mr Grimmett

Marland, Margaret (Mississauga South / -Sud PC) for Mr Boushy

Tilson, David (Dufferin-Peel PC) for Mr Johnson

Clerk / Greffière: Lisa Freedman

Staff / Personnel:

Peter Sibenik, procedural research clerk, Office of the Clerk

CA20N
XC20



M-15

M-15

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 29 May 1996

Journal des débats (Hansard)

Mercredi 29 mai 1996

Standing committee on the Legislative Assembly

Subcommittee report

Use of chamber

Comité permanent de l'Assemblée législative

Rapport du sous-comité

Usage de la Chambre



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 29 May 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 29 mai 1996

The committee met at 1542 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. I have a report by the subcommittee that I'd like to read to committee members.

"Your subcommittee met on Monday, May 13, 1996, and agreed to the following:

"1. That the committee postpone any further consideration of the issue of order and decorum until after the House leaders have discussed this issue.

"2. That the committee not pay to send any representatives to the National Conference of State Legislatures.

"3. That the committee look at establishing a policy for the use of the legislative chamber at its next meeting."

I require a motion to adopt this report.

Mr Frank Miclash (Kenora): I so move that we adopt the report of the subcommittee.

The Chair: Thank you, Mr Miclash. Any discussion on this motion?

Mr John O'Toole (Durham East): Just a question. The very first remark is a very open-ended one. I'm not satisfied that the issue will ever come back here. Under what motive would it come back? I'd like to see a time or a date put on there that this be dealt with by the House leaders before the end of this session so that this committee is empowered to examine, in a non-partisan way, the issue that I've heard each member here speak of sympathetically: the issue of decorum.

The Speaker has sent a memo to each member, and it seems to have a bit of polarity to it with the House leaders. I would like to move an amendment to recommendation 1 that we include a date, and I will move that after other persons have had an opportunity to speak.

The Chair: Do you have a date in mind, to make your amendment more specific?

Mr O'Toole: I know it's probably going to be busy. We meet till the end of June, which leaves us little time. I would say certainly before the last week of this sitting of the House.

Mr Miclash: I would suggest that the House leaders have taken it upon themselves that they want to discuss the issue, and if you have a problem with that, speak to your House leader. They have taken it upon themselves, as leaders within each of our caucuses, to discuss the issue, and I think you should report directly to your House leader. I think the amendment's out of order.

Mr R. Gary Stewart (Peterborough): I assume that to this point there is no report that the House leaders

have met or have done any report back to this committee. Is that right?

The Chair: It's my understanding the House leaders meet quite frequently —

Mr Miclash: Weekly.

The Chair: — and have met recently, but this issue has not yet been resolved to their satisfaction. Whether or not they've had a chance to preliminary —

Mr Stewart: Or whether they've even discussed it. I think that's the concern of Mr O'Toole. They got direction from the committee to meet, and we don't know whether they have talked about it or discussed it or whatever. This has been on the agenda from the first day we met in this committee. I know that government moves in various slow and mysterious ways, but when I see the conduct of the last few weeks in the House, I would suggest we move on it a little faster than we have been in the past year. I'm going to support this motion of putting a deadline on this. It's nuts, the way it's been going.

The Chair: While Mr O'Toole continues to put his amendment in writing, is there any further discussion by committee members?

Mr Gilles E. Morin (Carleton East): May I make a suggestion that perhaps you, as the Chair, could send a letter to the House leaders and mention that it was raised at committee that there's a concern about not having any response so far, and if so, when do they plan to answer us. Then it's the committee, because it's the committee who's waiting.

Mr Stewart: That's the way I feel.

Mr Morin: Sure. You ask them, "When do you plan to give us an answer?" Let them decide.

The Chair: As Chair, I have no problem doing that. Is that meeting with the intent of your proposal, Mr O'Toole?

Mr O'Toole: We are still under the direction of the House leaders, even with that recommendation of the subcommittee. All we're doing is putting in a date by which we'd like a response. If they agree not to discuss it, we can save ourselves a lot of time. We can move forward from this point. All I'm saying is, if they could get back to us by the end of this sitting, I'm happy. If they tell us to sit down and shut up, I guess that's fine too. This way it's caught in limbo; we might never talk about it again.

Mr Miclash: Talk to your House leader. That's the House leader's job. You should be discussing that with your House leader.

Mr O'Toole: In all fairness, Frank, I don't think that's a problem on our side. It has been discussed in caucus. I've discussed it in caucus and it's been responded to.

Mr Miclash: Then your House leader should have discussed it with our House leaders.

Mr O'Toole: They do.

The Chair: I have Mr O'Toole's amendment in writing and I'll read it to committee members: that recommendation 1 be amended by adding at the end "that the House leaders be asked to respond to the committee before the end of this sitting." Any further discussion on the amendment?

Mr Tom Froese (St Catharines-Brock): The amendment does not say what they have to come to us with. It just says they have to come back to us by the end —

The Chair: "That the House leaders be asked to respond to the committee before the end of this sitting."

Mr Froese: Respond to what, though?

The Chair: "That the committee postpone any further consideration of the issue of order and decorum until after the House leaders have discussed this issue and that the House leaders be asked to respond to the committee before the end of this sitting." It simply gives a time frame, an expectation that we'll have some sort of response from the House leaders before the end of this sitting, as I interpret it.

Are all members ready to vote on this amendment?

Mr Gilles Bisson (Cochrane South): No.

The Chair: Mr Bisson, did you have something you wish to contribute?

Mr Bisson: I'm just subbing here for a few minutes on the basis that our House leader is before the Estey committee. I find this a little awkward, to be trying to move this particular motion forward without my House leader being here. I would ask that we at least put this off until he's finished testifying to that committee and have him speak to this particular thing. It seems to me it's a different —

The Chair: I have a motion before the floor and I have to deal with it.

Mr Bisson: I'd move a deferral.

The Chair: I'm informed, Mr Bisson, that you're not properly substituted in. You're here representing the interests of your caucus, but you're not able to move —

Mr Bisson: I would just ask for unanimous consent as a member of the Legislature.

The Chair: Is there unanimous consent to defer this? No.

Mr Miclash: I'll move deferral.

The Chair: You're moving a deferral of the vote on this amendment?

Mr Miclash: Yes.

The Chair: For how long?

Mr Miclash: For 20 minutes. Isn't it normally 20?

The Chair: The committee's in recess for 20 minutes.

The committee recessed from 1550 to 1611.

The Chair: Mr O'Toole has moved an amendment to the subcommittee's report. All in favour of Mr O'Toole's amendment? Opposed? Carried.

Next, someone has to put a motion forward to accept the subcommittee report, as amended.

Mr Bill Grimmett (Muskoka-Georgian Bay): I so move.

The Chair: Any discussion on the motion? All in favour of Mr Grimmett's motion? Opposed? Carried.

USE OF CHAMBER

The Chair: The next issue we have is to review the issue of functions permitted in the legislative chamber. Our researcher, Mr Yeager, has prepared a bit of background information. Mr Yeager, I'd ask you now to give a brief presentation of what you prepared.

Mr Lewis Yeager: You've probably had a chance to review the memo. I won't go through it entirely. The essential information is on page 3, "Current Situation."

In March of this year, the management advisory committee considered and approved general policies and procedures for booking events and functions, including model parliaments, in the House. Appended to this are the minutes of the MAC meeting where this was approved, and the first page of appendix D includes the approved policy for model parliaments, including the basic policy and a list of procedures that have been approved for any group that wishes to use the facilities.

One of the provisions is that should they sit on weekends or in the evenings when the building is not normally open, that groups would be charged the costs associated with providing security, liaison and other functions. No group has yet actually had to do this, so the mechanism for determining these costs is still being prepared. One group has already postponed its request for using the chamber because they hadn't budgeted for such costs.

I don't see any need to go through this — it's fairly straightforward — but I'd be happy to answer any questions you have.

Mrs Margaret Marland (Mississauga South): I have a question. I can understand that out-of-pocket costs for the Legislative Assembly would have to be covered, but I'm just wondering why there would be actual out-of-pocket costs when we have full-time staff.

Mr Yeager: The explanation provided is that there would have to be increased security associated with the use for these events. Possibly, the cafeteria or the snack bar would have to be opened, and there would have to be somebody there to coordinate with the group for the use of the building. On weekends or evenings those types of people normally aren't present in the building, so there'd be overtime charges involved, perhaps booking additional staff on. The actual policy how to calculate this and charge it has not been finished yet, only the general principle that there would be a charge placed against the groups.

The Chair: We're talking about incremental costs above and beyond the normal staff complement.

Mr Yeager: That's exactly right. If an event is booked during the week, like one was last week, there are no additional charges, because the existing staffing and facilities are all in place. If, however, they wanted to have their model parliament Saturday and Sunday, the policy as approved by MAC would be that they would be charged some amount for the additional staffing required on the Saturday and Sunday as opposed to a typical Saturday and Sunday here in the building. I was unable to get any exact process yet, because Barbara Speakman's office is still developing the policies on how this charge-back would be made.

Mrs Marland: I wouldn't want the fact that we are saying there has to be a charge to be a deterrent to model

parliaments using the chamber until we know what the real charges are. Personally, I'm a very strong supporter of model parliaments. It's a tremendous experience for young people, whether they're of secondary school age or university age. And this building does belong to the people of Ontario.

If there is a way of facilitating the use for model parliaments, I think we should try to find that way. There's lots of staff who work overtime and take time in lieu. It's not an additional cost, because they take time in lieu of their overtime hours. If security means our OPP security service people, I realize that's a little more complex than staff in our interparliamentary public relations department. I would hope we don't make a decision or send out information on this until we know from Barbara Speakman's office what the real cost would be and what is a minimal amount of service necessary if it were on the weekends.

All of us have experienced model parliaments, I would expect, in our ridings — I know I certainly have — but at the provincial level, those students or young people travel from all over the province. The essence of the ethic we are helping instil in those young people is the future of democracy itself, and it's demonstrated by their participation in model parliament. I think anything that we can do to encourage that experience and that opportunity is worthwhile. With the fact that they do have to travel from all over the province, it's generally facilitated more easily on a weekend because trains and planes and other transportation, buses, are cheaper on the weekend. I just leave that for consideration by the committee, to try to enhance the opportunity of that youth.

1620

The Chair: Any further questions or any further observations?

Mr Bisson: I am just subbing here, as I said earlier. Our members of this committee, one of them being our House leader — he's giving evidence to the Estey committee. I'm at a bit of a loss here because I'm having to read through all this information fairly quickly. I would just ask, with respect from the government side, that we defer these matters until the next sitting of this committee so the regular members of the committee from my party can be here, especially my House leader, to deal with this. In fairness, I ask them to defer any votes on these matters until my House leader is here as a regular member of the committee.

The Chair: Well, Mr Bisson, you're subbed in to represent the interests of your party. It's a pretty straightforward issue.

Mr Froese: Is Mr Cooke not on the subcommittee?

The Chair: No, the official member of the subcommittee for the New Democratic Party is Mr Silipo.

Mr Froese: But the members who sit on the legislative committee from the NDP are aware of these amendments, right?

The Chair: They're aware of the subcommittee report and the New Democratic Party is aware that this was going to be discussed today, yes. Whether the information has been conveyed to Mr Bisson is another question.

Mr Bisson: I know there has been concern expressed at our caucus meetings. As the chair of caucus, I'm aware

of some of those discussions. Some of these matters we take very seriously, as you do on the government side, in terms of how we change the way things are done around this assembly when it comes to matters of security and how we utilize this building and how people access it.

It is a departure, in my view, from how we have done things in the past, in many cases. I just ask again, in respect for Mr Cooke, who can't be here because of the evidence he's giving, that we defer the votes on this until the day he is here the next time. It's not going to make the government fall to back this off by one legislative day of this committee and I would ask, with due respect, that we do that.

Mr Grimmett: Personally, I've gotten a little tired of having these committee meetings constantly put off and put off and put off. I'd just as soon deal with the stuff now. I think it's a pretty straightforward issue.

We've discussed some of this stuff before. Personally, having reviewed the material, I'd just like to say that I think we're headed in the right direction. We're liberalizing the use of the chamber, making it available to students. I don't think the weekend and evening issue is that big. We have enough time that the chamber's available in the daytime during the year when we're not in session. I think the Speaker is going to be able to work the groups in during those times.

Looking at the recommendations we've been provided with, I think number 1 makes a lot of sense, allowing the Speaker to manage the system within the guidelines in existence. The only thing about the guidelines that concerns me is that every request has to be referred to the House leaders, and I'm not sure that's really necessary.

The Chair: In fact, the House leaders and the Speaker have requested that this committee come up with some sort of protocol to deal with these things. They have asked for our advice.

Mrs Marland: I just want to confirm that it is this afternoon's meeting that's referred to in the subcommittee report, in light of Mr Bisson's question about deferring it. The subcommittee report said the committee should establish a policy "at its next meeting." Is this the next meeting?

The Chair: It is indeed, Mrs Marland.

Mrs Marland: I think that answers Mr Bisson's question.

Mr Bisson: I don't do this to try to stymie the committee or to slow anything down, but I can tell you, as a former government member, of a number of occasions when the Tory party, which was at that time the third party, with fewer members on the committee, came forward with such requests. I've sat in the chair and done this before in respect for Ernie Eves at the time, your House leader, because I recognized that, as the third party, you have fewer members than everybody else. It is more difficult because the demands on their time and the demands in the Legislature are fairly acute. We allowed those kinds of things to happen in government. I'm asking for a little bit back of the same we did for you when we were in government.

I'm being asked to read a report in the three or four minutes I've been back here and then vote on behalf of my caucus, when I haven't had an opportunity to read the

entire report and I haven't had an opportunity to know where the rest of the caucus is on this.

I think you recognize that this assembly is a function of the caucuses, and we decide as groups within those caucuses how we are going to deal with each individual issue as it comes forward. I cannot do my job at this point, given that I've only been on this committee for seven minutes now, to vote on this issue.

It's not going to bring the government down; it's not a big, huge issue. It's not as if it's going to cost the government any extra money. It's not going to cost the government any extra political problems. I'm asking to defer this until such time as the House leader from my party and the other member, Mr Silipo, are here to deal with it. There are reasons why they're not; I think you recognize that they're extraordinary. Mr Cooke is having to give testimony, as we speak, to former Justice Estey. You can't be in two places at one time in this case, and I ask that we respect that.

Mr Morin: Gilles, there's nothing there, nothing at all. I think the most important vote took place a minute ago. We've been lending the House to anyone. I think Margaret raised some important points that should be taken into consideration but I would go along with the first suggestion which was made.

Mr Mario Sergio (Yorkview): Excuse me. Was that the one about privatizing the House?

The Chair: No. "Inform the Speaker that the committee approves all requests for use of chamber by model parliaments as long as they comply with the assembly guidelines and have all other requests for use of chamber determined by the Speaker."

Again, this is something on which the Speaker has requested our advice, as well as the House leaders', to determine the best use of the chamber.

Mr Bisson: Okay. I'm going to make it really simple. I take it that the government is saying no. I therefore request a 20-minute recess to defer this so I can read it before we vote.

The Chair: You cannot request a recess unless there's a question on the floor.

Mr Bisson: I'll wait for the question and then I will request the recess. I need a chance to read this. You're asking me to vote on something I haven't even seen.

The Chair: No one's moved a motion.

Mrs Marland: Admittedly I've sat in this House five years longer than Mr Bisson, but Mr Bisson hasn't just arrived in this House. He's been here almost six years.

Mr Bisson: Actually, going on seven.

Mrs Marland: I have just been subbed in a few minutes ago, as you have. I'm not a regular member of this committee either. During the discussion I've been able to read these nine items, and they're so straightforward that I'm sure you, having been a member of this Legislature for six years, can comprehend those nine items and decide on your own what would be in the best interests of the House. If we want to go through the nine items that are listed here and discuss them and then decide if we want to vote on them as a block — I would prefer that we vote on them individually — that's how I would suggest we proceed. If Mr Bisson has any difficulty with that and he wants to move a motion of defer-

ral, let him move the motion and let's vote on that and get on with the business.

I've been subbed in this committee three times this year, and the committee gets adjourned every time. We never do anything.

Mr O'Toole: This is new to all of us. I read mine yesterday and I suspect the nine points — you're familiar with the change, a very small change?

Mr Bisson: I'm listening to debate. I can't listen to debate and read at the same time. I'm listening to you guys.

Mr O'Toole: I would encourage you to read that. The only questions I have, and I think Margaret's point is made — first, I'm supportive of the public's use. This tries to ease that process and look at alternative ways of providing appropriate security at the most reasonable cost. That's really what Margaret was talking about, and I completely support that. Other than that, I think the approvals are far more streamlined.

Mrs Marland: I was talking about model parliaments. I want to emphasize that's the use I'm supportive of.

Mr O'Toole: Yes, that's what this is.

Mr Grimmett: I'd like to move that — I suppose what we're doing is amending the current policy to include suggested amendment (1), "Inform the Speaker that the committee approves all requests for use of chamber by model parliaments as long as they comply with the assembly guidelines...."

The Chair: Your motion is that option number (1) would be the preferred option?

Mr Grimmett: That's correct.

Mr Bisson: The nine options according to this page here? Is there a motion being put?

The Chair: The nine options which are part of your package.

Mr Grimmett has moved that option (1) be the one we would recommend to the Speaker for how the chamber is used for model parliaments.

Mr Bisson: Are we into discussion now?

The Chair: Yes, there can be discussion on that motion. Is there any discussion on the motion?

Mr Bisson: Give me a chance to read it. That's a fairly easy one.

The Chair: Seeing no discussion, I call the question.

Mr Bisson: I'm asking for a five-minute recess so I can go back and confer with somebody. I'm being nice. Rather than 20 minutes, all I want is five.

The Chair: The committee is adjourned for five minutes.

Mr Bisson: Thank you very much.

The committee recessed from 1630 to 1635.

The Chair: We are now in the midst of a vote on a motion by Mr Grimmett suggesting that this committee inform the Speaker that the committee approves all requests for use of the chamber by model parliaments as long as they comply with the assembly guidelines, and have all other requests for the use of the chamber determined by the Speaker.

All in favour of Mr Grimmett's motion? Opposed? The motion is carried.

Mr Bisson: Can I bring up another matter before you adjourn?

The Chair: Other business? Yes, Mr Bisson.

Mr Bisson: Thank you very much, Mr Chair. A couple of things: This is not a strong complaint. I just point out that I had an opportunity in the House to speak to the clerk of the committee and I understood the committee was going to be reconvening at a quarter after. I left the House and was here before a quarter after on this clock and the committee was sitting, so I did not get an opportunity —

The Chair: I can answer that, Mr Bisson, because I watch that clock very closely. We use this clock. It was a 20-minute recess. The start of the recess was 5 minutes to 4, and at 4:15 by that clock, which was 20 minutes, we started the meeting again.

Mr Bisson: I would just point out that somebody had better check them because the clocks between here and the House are not jibing.

The Chair: That clock is different from my watch, but we've been using that clock for the benefit of all members of the committee. I appreciate your point.

Mr Bisson: I just wanted to say that for the record.

The Chair: I appreciate your point.

Mr Bisson: One second. I just want the record to say that, because I was sitting in the House. I'm supposed to be on House duty and I was watching what was happening there.

I say this to Margaret, the member for Mississauga South: You walked into this committee and you knew what you were going to do. It's fairly easy, when you're government and you have people in here all the time who are watching what's happening on the committee, to come and sub in as a member, but when you're asked to come in for your party and you haven't looked at any of this information before, read through it, understand what it's about and make up your mind on how you're going to vote in about three minutes flat, that is somewhat difficult. I'm not looking for a big debate on this. I just want the record to clarify that.

As a third point, I think members should be conscious of their House leaders. I don't believe that Ernie Eves, the government House leader, would be very appreciative of what happened with the motion prior to this one. I warn members that it is not a good thing to go contrary to what your House leader wants.

The Chair: Mrs Marland, on this point.

Mrs Marland: Not to turn this into a debate or to prolong it, but I would like to reconfirm that when I came in here a few minutes before Mr Bisson, I was subbed in and was not aware of what was on the agenda. Anybody who knows me knows that I'm not led around with a ring in my nose, whether I sit on the government side or not, and for the number of years that I sat on the opposition side, probably at least 10½, we all know there are times that we are subbed into meetings and we come in and very quickly have to read something. I did exactly that this afternoon as a sub. I didn't come in with my government members saying to me, "This is what we want to do and this is what we're doing." I was just handed this at the point that you came in, so you and I both had the same amount of time. I suggest to you that it was so simple and straightforward that you just had to read it and know, with your historical experience, whether or not you could support it, and that's simply what I did.

The Chair: I have one other thing to bring to the committee's attention. I've received a letter from the Clerk of the House requesting that this committee review a private bill which has been, I believe, presented to legislative counsel. What I'm proposing to do is deal with this matter next week. It's a private bill that has been put forward in the name of Mr Hastings and not yet introduced in the House. I'd like to deal with it next week. We'll have information packages sent out to all committee members in advance of this.

Mr Bisson: Just a question: You're going to deal with a private bill that hasn't been introduced in the House?

The Chair: I'll ask Lisa to explain in detail what this is all about.

Clerk of the Committee (Ms Lisa Freedman): The standing orders state that any application for a private bill that does not comply with the standing orders can be referred to the Legislative Assembly committee. This application is in the application stage; obviously it hasn't been introduced. It's the opinion of legislative counsel that it's not proper subject matter for a private bill, therefore it's being referred here for this committee to determine whether it can go on for introduction.

The Chair: Nothing nefarious.

Mr Bisson: Just checking.

The committee adjourned at 1641.

CONTENTS

Wednesday 29 May 1996

Subcommittee report	M-155
Use of chamber	M-156

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

Bartolucci, Rick (Sudbury L)

Boushy, Dave (Sarnia PC)

Cooke, David S. (Windsor-Riverside ND)

DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Hastings, John (Etobicoke-Rexdale PC)

Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

*Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Bisson, Gilles (Cochrane South / -Sud ND) for Mr Silipo

Marland, Margaret (Mississauga South / -Sud PC) for Mr Boushy

Sergio, Mario (Yorkview L) for Mr Bartolucci

Clerk / Greffière: Lisa Freedman

Staff / Personnel: Lewis Yeager, Legislative Research Service

20N
C20
L20



M-16

M-16

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 5 June 1996

Journal des débats (Hansard)

Mercredi 5 juin 1996



Standing committee on the Legislative Assembly

Application for Bill Pr40

Comité permanent de l'Assemblée législative

Demande concernant la proposition
du projet de loi Pr40

Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.

Hansard Reporting Service, Legislative Building,
Toronto, Ontario, M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats, Édifice du Parlement,
Toronto, Ontario, M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 5 June 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 5 juin 1996

The committee met at 1542 in room 228.

APPLICATION FOR BILL Pr40

Consideration of whether the application for Bill Pr40, An Act respecting the Association of Architectural Technologists of Ontario, should be allowed to proceed as a private bill.

The Chair (Mr Ted Arnott): I refer members of the committee to the agenda which has been handed out by our clerk. Our first item of business is to consider whether the application for Bill Pr40 should be allowed to proceed as a private bill. I ask our clerk, Ms Lisa Freedman, to explain to committee members the standing order under which we are reviewing this issue.

Clerk of the Committee (Ms Lisa Freedman): The standing order provides that any application for a private bill that does not comply with the standing orders shall be referred to the Legislative Assembly committee. This application was referred by the Clerk to the Legislative Assembly committee and in a moment legislative counsel will explain the issue.

Normally this committee looks at really technical breaches of the standing orders. For example, the standing orders require that all the applicants advertise for four weeks in the Ontario Gazette and in the local newspaper. We may have a situation where someone has only advertised for three weeks, you're getting towards the end of the session and it's very clear that the standing orders have not been complied with. This committee has the power to waive any requirement.

This situation is slightly different because you're looking at whether the actual subject matter of the private bill is the proper subject matter. I'd just like to stress that there is no right or wrong answer to this question. It's up to the committee to decide. If the committee decides it is the proper subject matter for a private bill, nobody can come back later and say, "Sorry, the committee was wrong; it's not." It's a procedural issue, not a legal issue, and it's totally up to the committee to decide.

The Chair: I'd like to recognize Ms Susan Klein, legislative counsel, at this time.

Ms Susan Klein: I believe that my memo dated June 3 to the Chair of the committee has been distributed to the members. I will be briefer in my comments today than I was in my written opinion.

The memo concluded that the application for Bill Pr40 is not the proper subject matter for a private bill, specifically because its title designation provision amends the title designation provision in the Architects Act.

The argument in support of this opinion has three points: First, private legislation should not amend public

legislation. This is a basic principle of parliamentary procedure that governs private legislation in Ontario. Second, section 9 of the proposed bill does amend public legislation. The Architects Act is a public act. Under it, architects are given exclusive use of the term "architect" and any variations on the term that would lead one to believe that the person is entitled to practise architecture.

It is an offence under the public act for anyone who is not an architect to use the designations reserved for architects, with three specific exceptions. One exception is that members of the Association of Architectural Technologists of Ontario are permitted to use the terms "architectural technologist," "architectural technician" and their French equivalents without committing an offence.

Notwithstanding this dispensation, architects continue to have the right under their public act to call themselves "architectural technologist" and "architectural technician" and it is still an offence under the public act for anyone else to use these terms.

Now we have the proposed Bill Pr40 which makes it an offence for anyone who is not a member of the Association of Architectural Technologists of Ontario, including architects, to use the terms "architectural technologist," "architectural technician" and their French equivalents. This would change the designations architects are entitled to use under the Architects Act and it is in effect an amendment to the Architects Act.

My third point is that this amendment is not an insignificant matter that can be overlooked. The principles that govern private bills suggest that a minor amendment of public legislation by private legislation is not fatal to the application. One has to consider the nature and degree of the proposed amendment, but the reservation of titles is central to the overall scheme of the Architects Act and it is the very purpose of the proposed private bill. The proposed amendment is a fundamental one.

To conclude, my advice to this committee on the procedural issue before it is that the application for Bill Pr40 in its present form is not appropriate for private legislation. It could proceed as private legislation only if it were amended to exempt from its offence provision the persons who are entitled to use the designation "architect" under the Architects Act.

The Chair: I'll call forward Mr Hastings, who is the sponsor of this bill and he has with him Virginia MacLean, who is a counsel, and Mr Steve Offer as well, who is interested in putting forward recommendations to this committee.

Mr John Hastings (Etobicoke-Rexdale): I'd like to let these folks introduce themselves for everybody on the committee.

Mr Steven Offer: My name is Steven Offer and I'm a representative of the Association of Architectural Technologists of Ontario. With me is Mr David Hornblow, the president of the association, and Ms Virginia MacLean, legal counsel to the association.

We'd like to thank you today for giving us the opportunity to present our position. Our submission will be in three parts: firstly, by Mr Hornblow in providing an overview of the Association of Architectural Technologists; secondly by Ms MacLean to provide an analysis of our position; and lastly by myself as a submission. With that, Mr Chair, I would like to invite Mr Hornblow to begin.

Mr David Hornblow: As was mentioned, my name is David Hornblow. I'm the president of the Association of Architectural Technologists. The Association of Architectural Technologists is a group of men and women who share a common interest and knowledge in the art and profession of architectural technology. Members of the association who have met the standards set out by the organization are allowed to use and have used the title "architectural technologist" since 1969.

Our membership comprises building officials throughout the province of Ontario, as well as private practitioners, designers within architects' offices and in various government levels and agencies. We're also teachers, consultants, specification writers, job superintendents and project managers. The list is endless.

As an association, we touch every aspect of the construction industry. We are able to do so through our education, our work experience and our accreditation through the Association of Architectural Technologists. We started informally in 1965 and gained formal recognition in 1969 through a non-profit corporation act. By becoming a non-profit corporation, we have been self-governing and self-regulating since then.

The association started off with 126 members and has continued to grow to its present total of 1,349. Those members are represented at 10 provincial chapter levels, various college chapters, as well as a provincial council. As you can see, we have continued to grow and will continue to grow through the passing of this proposed act and other initiatives that we are currently doing and will undertake in the future.

The membership is spread throughout the province of Ontario, Canada, the United States, the Caribbean and other countries. The reason for this is our members are sought out by the public and the industry as a whole for their professionalism, their expertise, their skills, their knowledge and their ability to get the job done well.

1550

The association is a proactive member of the construction and design industry. For example, we've included students on our council who have voting rights so that students know that they have a say in what and how the association carries on its business and how it represents them, for they are our future and the industry's future.

We have also made it mandatory for our members in private practice who hold the association's seal to carry liability assurance. We've carried it one step forward by adding a professional development program for all our accredited members.

We supported the Ontario Association of Architects in 1984 by writing a letter of support for their act. We went further by including the Ontario Association of Architects on our certification board so that there could be a better understanding of who we are and what we are.

The Association of Architectural Technologists has also created a liaison team so that both organizations could come to an understanding and meet to discuss a variety of issues that affect both organizations. My association's efforts in keeping the OAA a part of our team has gone on for 25-plus years, and we hope that it will continue, for we see the passage of our act as an integral part, an evolution of our Association of Architectural Technologists of Ontario.

With that, it brings me to my closing statement. It is imperative that you rule that the AATO Act is not out of order and that the Architects Act does not require amendment to allow my association's act to go forward to the next level. My association's legal counsel, Virginia MacLean, will discuss the legal issues, and I'm convinced that you'll see that what we are asking is not impossible, nor is it a recreation of the wheel, for it has already been done previously through the Landscape Architects Act passed in 1984. Lastly, I wish to thank the committee for its time and its future support.

Miss Virginia MacLean: You have before you a paper which we have prepared on behalf of the association and you will find in that paper some background material with respect to the AATO and also background material with respect to the progress of the proposed bill to date.

The issue before you today, as stated by legislative counsel, is whether or not section 9 of the proposed bill complies with the standing orders. We have no dispute with the position that has been advanced by the Ministry of the Attorney General and legislative counsel with respect to the fact that there is no law prohibiting explicitly a private bill from amending a public act, and we also agree that the matters to be taken into account are those which are — the only guidance for you is found in Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament.

The point at which we differ with the opinions of both the Ministry of the Attorney General and legislative counsel is whether or not there is a conflict. It's our position that section 9 of the private bill can coexist with section 46 of the Architects Act, and it neither repeals nor amends section 46. Therefore, in our submission, the provision does not apply.

We have come to this conclusion based on the following facts. First of all, in reviewing the history of what is now current section 46 of the Architects Act, we look back at Hansard and the history of Bill 122, as it was then, and at the same time Bill 123, which was the Professional Engineers Act, which were considered by the standing committee on administration of justice in 1984. At that time, as Mr Hornblow has indicated, the AATO supported the OAA and the bill. According to that report, there were a number of people from various professional and quasi-professional groups who expressed interest in the bill and the progress of the bill and they were concerned about its effect on their ability to carry on.

There is comment in Hansard that these groups could proceed by way of a private bill and it's our opinion that

section 46 was never intended to give the architects the ability to use the names of any of those groups.

We say that's too broad an interpretation, and in support of that we have attached to our material two private bills that were also passed in 1984, just shortly after the amendments were made to the Architects Act. You will find in your materials An Act respecting the Ontario Association of Landscape Architects which was assented to May 29, 1984, and also the act respecting the Ontario Association of Certified Engineering Technicians and Technologists. Both pieces of legislation have sections which give the various groups the rights to use a particular title, and the Ontario Association of Landscape Architects is particularly interesting because the designation that is protected is one using the word "architect" — "landscape architect" — which is the very word which is referred to in the section.

It's important, we submit at this point, to make the differentiation, because what we are looking at is "architectural technologist," not "architect technologist." The Legislature at that time did not put in an exemption for members of the OAA to use the term "landscape architect." They said it is perfectly all right to put in a section which is similar to the section which we are now seeking.

For that reason, we're saying that this bill, which has a section similar to that in an existing piece of legislation, which was a private bill, should proceed.

The other issue we'd like to bring to your attention is the provisions of section 46 of the Architects Act. You have to read section 46 of the Architects Act, we submit, in conjunction with the regulations that were made under that act. You will find in your materials extracts from regulation 27. Specifically, you'll find two provisions, section 40 and section 49. Section 40 restricts an architect from using a name designation or letterhead that is otherwise misleading. Section 49 prescribes as a standard of practice the requirement that every architect must use the designation "architect" or "architects" in the holder's practice of architecture.

An architect who meets the requirements of the Architects Act, in our submission, cannot use the term "architectural technologist" or "architectural technician" without an amendment to the regulations.

It's therefore our submission, based on these grounds, that we do not have a conflict. We have a term that has been used by an association since 1969 and it has been known to the public by that name since 1969. You will find, in the materials dealing with the history, the question of exemption was raised and whether or not an exemption provision should be inserted into the bill to exempt from the provisions of the designation "architects." This position was taken to the council of the AATO and they said, "No, we don't want architects using the term 'architectural technologist' or 'architectural technician' because we have been known in the industry and in the public since 1969 by that title and it is misleading and confusing to the public."

For those reasons it's our opinion that in this particular case the architects do not have the right to call themselves architectural technologists and technicians, and we take issue with legislative counsel on that point. Therefore, we respectfully submit that there is no contravention

of the standing order with respect to section 9 of proposed Bill Pr40.

Mr Offer: I would like to conclude our presentation by indicating the following. As you will know, the overriding purpose of the proposed legislation is to permit this association to increase the knowledge, skill and proficiency of its members, to foster a high standard of quality and competence, to establish and maintain strict rules of ethical conduct for its members, to inform the public of the aims of the association, and to promote harmonious relationships.

It is clear the proposed bill is responsive to the highest degree of public accountability and responsibility to the public which they serve. This bill does not, will not and is not intended to take away any existing rights of any other group to work in any area. This bill is only designed to allow architectural technologists to demand the highest standards of their members, for which the public is the single largest beneficiary. This bill does not create any precedent of any kind.

1600

The Ontario Association of Landscape Architects came before this Legislature and the appropriate legislative committee with a bill designed to allow them to govern their members, and it was passed. Engineering technologists came before the Ontario Legislature and, again, the appropriate legislative committee with a similar bill, and it was passed.

The Association of Architectural Technologists of Ontario does not come before you today to ask for passage of the bill; they come before you today to ask you to permit them to argue this bill at the appropriate committee by ruling that this bill before you is in order. Precedent allows this to happen. You have heard from Mr Hornblow and Miss MacLean. We respectfully request that you, based on the submissions made, allow this bill to proceed to committee.

The Chair: Do any committee members have questions of Mr Hastings, Mr Hornblow, Miss MacLean or Mr Offer at this time?

Mr John O'Toole (Durham East): Yes, if I may, just to more or less clarify. We did get a fair amount of paper on this, and I guess the question I have to ask is, the current Architects Act has an exemption where you're allowed to call yourself an "architect." That was basically agreed to in 1969 or whatever it was?

Mr Hornblow: In 1984, when the Architects Act came into being, our association gained an exemption to title to call ourselves "architectural technologists" and "architectural technicians."

Mr O'Toole: So, first of all, you got an exemption from an existing act permitting you to use the term "architect"?

Mr Hornblow: No, "architectural technologist" and "architectural technician."

Mr O'Toole: In your definition, the purity of it all is that "architect" then became somewhat diluted, whatever, to "architectural technologist" or "technician." You got to use the term, which implied some kind of knowledge, "architect," as long as it was tagged with a term defining that, ie, "technologist." That implies some lesser amount of knowledge, in my humble view. Is that really what has

happened in the history? That's what I'm trying to establish.

Mr Hornblow: I would respectfully disagree with that. The association has always been known as Architectural Technologists. Even in 1965 we were known as Architectural Technologists.

Mr O'Toole: Yes, but you didn't have the association, though; you didn't have a professional association.

Mr Hornblow: In 1965, we existed; in 1965, we came to be informally existing. In 1969, we were known as the Association of Architectural Technologists, with the right to use the titles "architectural technologist" and "architectural technician."

Mr O'Toole: That was formally agreed to in 1969?

Mr Hornblow: We existed then.

Mr O'Toole: By whom?

Mr Hornblow: Between the two groups.

Mr O'Toole: Just mutually?

Mr Hornblow: Yes.

Mr O'Toole: There was no change to the act?

Mr Hornblow: Our title was included in the Architects Act; similarly, the "landscape architect" title was also included in 1984.

Mr O'Toole: I guess we're getting to the nub of it, if I may pursue. Now you want to exclude the architect from using the "technician," refined definition?

Mr Hornblow: They have never used the title "architectural technologist" or "architectural technician." They've never wanted to use those titles. We've always reserved the right to those titles. In fact, the Architects Act is very clear. It says you have to be a member of the Association of Architectural Technologists of Ontario to use those titles.

Mr O'Toole: To use the refined definition, whatever you call it?

Mr Hornblow: Not a member of both the OAA and the AATO; you have to be a member of my group.

Mr O'Toole: I guess I have one more question. Really, that's very clear they had not used — and is it understood that they may want to now use "technologist," to be an architect and advertise themselves as a technologist without being a member of your association?

Mr Hornblow: Pardon? Sorry, I missed that.

Mr O'Toole: If there were architects who wanted to advertise themselves as architect technologists, that's what this is about technically? I don't know why they'd do that.

Mr Hornblow: Basically, we offered at the time when we were in the discussions with them about our act, we simply said, "If you wish to use the title 'architectural technologist' or 'architectural technician,' we would be more than happy to look at dual membership." Similarly, if we wished to use the title "architect," we would have to then apply to the architects' association.

Mr O'Toole: Okay, a final question, if I may: How many years of formal training to be an architect, and the subsequent is, how many to be a technologist?

Mr Hornblow: To the best of my knowledge, it's a five-year university degree program for an architect, followed by two years of internship with the Ontario Association of Architects. For an architectural technologist, it's a minimum of a three-year college program,

followed by four years of internship, followed by a written exam on completion of their internship. At that point, if they've met all the criteria, then they can become an architectural technologist.

Mr O'Toole: Does an architect know more than or less than a technologist?

Mr Hornblow: We know equal amounts. We're equals.

Mr O'Toole: Do you charge the same fees?

Mr Hornblow: Some of our members do, some of our members don't. It's a free society in that regard.

Mr O'Toole: Okay. I'll let others ask questions.

The Chair: I have Mr Silipo next.

Mr Tony Silipo (Dovercourt): Part of my question actually has been answered in that exchange, but there is one point I just want to make sure I understood correctly. You made the argument earlier that section 9 of the proposed act can coexist with section 46 of the Architects Act. If I understood that right, it's because you're saying that in fact the term "architectural technologist" has not been used by members of the Ontario association, right?

Miss MacLean: That is correct, and also based on the fact that the regulation does not permit them to use anything but the term "architect."

Mr Silipo: Then the only members who can use "architectural technologist," as you were saying, are members of your association. They can be members of — I'm sorry, I get the two mixed up — the Ontario Association of Architects, but they cannot, as members of that association, use the term "architectural technologist."

Mr Hornblow: Yes.

Mr Silipo: Okay. I appreciate the fact that someone reminded us, and I think it would probably be useful for us to keep this in mind, that we're not here to debate whether we agree or not with this amendment. The broader question for me, or one of them at least, is, who in your view besides the members of the two respective associations would be interested in this issue?

Mr Hornblow: I don't think I follow the question.

Mr Silipo: Part of the argument that's made in terms of whether this should be dealt with as a private bill or a public bill is that as a private bill it gets less public scrutiny than it would as a public bill. Part of the issue for me on that level is that it's clear who's affected by the bill directly — it's the members of the associations — but what's the nature of the public interest as you see it in terms of members outside of the association who would be interested or affected in any way in this whole issue, in this whole discussion?

Miss MacLean: I can only speak to the response to the advertising. That's the only way we know. The only interest we have is other similar groups. We mentioned OACETT, and they have responded. The architects are interested. Apart from those groups that have an interest because of the name and the area of practice, those are the only groups that have exhibited any interest.

Mr Silipo: In terms of any other provisions that are in the bill, are there any changes contemplated with respect to governance provisions, or is this really the substantive issue, the one we're discussing here?

Miss MacLean: This is the only issue.

Mr Bill Grimmatt (Muskoka-Georgian Bay): My question is going to be quite similar to those asked already, but I might be a little bit more direct. I wonder, Virginia MacLean, if you would mind commenting on this. Do you accept that section 46 of the Architects Act gives OAA members the exclusive right to use the term "architect" alone or in combination with other words? Do you accept that?

Miss MacLean: Yes, I do.

Mr Grimmatt: I'm having difficulty understanding how it says that, because I'm looking at section 46 myself.

Miss MacLean: It says use the term "architect," or "architecte" in French, "as an occupational designation." 1610

Mr Grimmatt: What concerns me is the "in combination with other words." I'm having some difficulty with that. I wonder if you could comment on that.

Miss MacLean: If you look down in clause 46(2)(b): "(b) uses,

"(i) an addition to or abbreviation of the title...." I think maybe that's where they're getting "in combination with."

Mr Grimmatt: But I think that section applies to —

Miss MacLean: Then it goes on:

"(iii) a term, title, addition or description,

"that will lead to the belief" that they engaged in the practice of architecture.

Mr Grimmatt: It seems to me that section prevents other people from using those designations. I don't know how it gives architects the exclusive right to use the word "architect" in combination with other words. That's where I'm having difficulty.

Miss MacLean: Yes, and I agree with that comment in that sense because that is where we have the problem and this is where we say that the only word they can use is "architect" if you read the regulation. That's the only way they can describe themselves.

Mr Grimmatt: Thank you.

Mr Frank Miclash (Kenora): First of all, I'd like to just thank the group that's come before us. We've had, as has been indicated already, a good amount of materials provided and we have no problem with the fact that this should proceed as a private bill and we'll certainly be supporting that on the materials we received.

Mr R. Gary Stewart (Peterborough): Is it my understanding that an architect, if he pays the dues, can be then classed as an architectural technologist? Is that right?

Mr Hornblow: Essentially, yes. If he meets the qualifications of the architectural technologists, yes.

Mr Stewart: But he must meet the qualifications because he's had more education etc than what you require as a technologist.

Mr Hornblow: By the time an architect and an architectural technologist finish their internship and accreditation education, each equals seven years.

Mr Stewart: Can a technologist pay dues to the architectural group and use the word "architect" only?

Mr Hornblow: That's more difficult.

Mr Stewart: Why?

Mr Hornblow: The association of architects — we are currently discussing that with them. There's another

section within the Architects Act called the "prescribed class of persons" and we're currently discussing that aspect of it. So there can be dual membership on both sides. In other words, one of my members could become a member of the association of architects or vice versa — a member of the association of architects could become. Right now, there's nothing stopping a member. In fact, we have dual members within my organization who are architects, as well as architectural technologists.

Mr Stewart: I don't wish this to be derogatory by any means, but what we're basically talking here is a turf war.

Mr Hornblow: Yes.

Mr Stewart: The final question is then, why can't your profession set the standards and control it internally rather than it having to be done by legislation?

Mr Hornblow: For that very reason. We wish to control our membership in how they're educated, how they gain their work experience and what is recognized as good work experience on a variety of issues. This act would entitle us to do so on a much wider basis.

Mr Stewart: Yes, but why can't you do that within your own profession as such? I don't know why, if you set your standards within your association, professionalism among your members, it should not adhere to those regulations that you have established on behalf of your own profession.

Mr Hornblow: In fact, my membership does hold those standards very high and does adhere to those standards. What we are looking for —

Mr Stewart: But the other guys don't?

Mr Hornblow: I wouldn't want to hesitate to even go down that path.

Mr Stewart: I guess that's where my concern is, that you've got an excellent profession, both people have.

Mr Hornblow: Yes.

Mr Stewart: Why can't you control it internally?

Mr Hornblow: In fact, that's what we wish to do.

Mr Stewart: You'd like to do it.

Mr Hornblow: We wish to control it internally.

Mr Stewart: But you feel it has to be an amendment to this to do that?

Mr Hornblow: Not an amendment. We're seeking our own act, yes.

Mr Stewart: Oh, okay. Sorry. Thank you.

Mr Ron Johnson (Brantford): I'm getting what appears to be conflicting opinions on whether or not this particular bill is in order. Is it appropriate to ask a question of legislative counsel at this time?

The Chair: Certainly.

Mr Ron Johnson: Obviously Ms MacLean is saying very clearly that they believe this is in fact in order and I'm hearing the opposite from legislative counsel. I guess what I find to be most troubling is determining whether or not — based on the precedent set with the landscape architects, what is the difference between this proposed bill and the one that was accepted, I believe, in 1984 — is that right, 1984? — for the landscape architects, and why back then was that found in order and this one you're claiming is not?

Ms Klein: There's a big difference. First, the Architects Act sets up the offence provision. It says it's an

offence for anybody who isn't an architect to use the term "architect" or a variation on it. Then it says it isn't an offence for the AATO to use these terms and it isn't an offence for a person to use the designation "landscape architect."

Basically, it said anybody can call themselves a landscape architect. In other words, landscape architect was not reserved for architects at all. They said: "There's no confusion. If you call yourself a landscape architect, I might confuse you with a gardener, but I will not confuse you with an architect." The way they put it in the act was to say that any person may call themselves a landscape architect. So when the landscape architects association wanted private legislation to say only we can call ourselves landscape architects, it was not a conflict. They said: "Anybody could use it. Anybody in Ontario could call themselves a landscape architect under the Architects Act." Then you got private legislation that reserved that term for the landscape architects association members. No conflict, no problem.

I can speak to the certified engineering technicians as well, if you like. In the Professional Engineers Act, the term that's reserved for the professional engineers — and that's the public legislation — is "professional engineer." In the private legislation that came forward, the Certified Engineering Technologists and Technicians Act, the term that is reserved for the members of that association is "certified engineering technologist" and "certified engineering technician." So a professional engineer can call himself or herself an "engineering technologist" or "engineering technician" and he or she is not committing an offence under the private legislation. The people protected by the private legislation have to call themselves "certified engineering technologist" or "certified engineering technician," and if they drop the "certified," then they may well be conflicting, but the term that's reserved for them is "certified."

There's a big difference between professional engineer and certified engineering technologist — not a big difference and the confusion in the public eye between architect and architectural technologist, architectural technician.

Mr Ron Johnson: Can I get the same question answered by Ms MacLean as well? Would that be possible?

The Chair: Would you care to speak to this, Ms MacLean?

Mr Ron Johnson: I'm getting the difference and I've obviously got to make up my mind based on two opinions, and I'd like to hear it.

Miss MacLean: My answer to the question is that notwithstanding the sections referred to by legislative counsel say for a "person" to use the designation "landscape architect" and the exemption for the AATO member said for a "member," the legislation itself, the Ontario Association of Landscape Architects says that every member may use the designation "landscape architect" and then it goes on to reserve it to those members.

I'm having difficulty understanding the logic of it because it's our submission that it's exactly the same thing. As a matter of fact, it is amending the act from a person to allow a special group of persons to use it and

takes away the right of other people to use it by the amendment. Section 10 only allows landscape architects to use that term, so I fail to understand the difference between the two. Whether the words "a person or a member" are there, it's the same thing and that's why we contend it's exactly the same situation.

1620

Mr O'Toole: I want to focus on the real issue here, the question whether or not this is the appropriate methodology for amending an existing public act.

My own view is that the descriptions given to us of the certified engineering technologist and the landscape one — there is a difference. Here's the way I understand it. I don't know if you can respond to this. This particular attempt for a new act actually is different than the other two, because the other one extended a privilege to the certified engineering technologists, and the problem I have with this particular one is it restricts a privilege. Okay?

Do you understand? The provision in yours would restrict a privilege from someone using that term. Okay? So it's actually in the public's interest not to reduce the privileges that already exist in the public act, and this change would reduce privileges to some group of people who have it today. In that respect, it's not in the public good or the public domain from a purely legislative perspective, not dealing with the technology and the technician and all that kind of stuff. It's purely from the point of view that I'm an architect today and I can call myself a number of things, and if this thing passes I can't call myself an architectural technician.

You're reducing the rights of the common people who can use some term today so that tomorrow, because of your private member's bill, I can't use that term. In that respect, it is in the public interest. That's why I do not think a private member's bill is the correct methodology or process to do it. It doesn't mean you can't come and do it with the architects in some other form. That's something you know more about than I. But do you understand my arguments?

Interjection.

Mr O'Toole: It restricts the privilege. The others extended a privilege. It restricts the current people from some — I think I've made my point.

The Acting Chair (Mr Ron Johnson): Would anybody like to respond to that?

Mr Offer: Maybe I'll respond. I've listened carefully to the questions. I think it's firstly our position that the proposed legislation does not operate as an amendment to public legislation — first point.

The second point we make is that, notwithstanding the argument put forward by legislative counsel, there is on a reading of the Architects Act and proceedings that have taken place in this Legislative Building in the past, precedent to allow a bill such as this to move forward to the appropriate legislative committee for argument at that venue.

The third point we make is in direct response to your question as to the restriction of rights, and there are two points to that. Firstly, there is nothing in the proposed legislation which is designed and intended or to be interpreted as restricting the rights of any individual to

practise in a way that they now practise. The second point is that our position, based on the rights of usage of word and name, that the current regulation under the Architects Act does exactly what you have indicated, that we think in fairness and on balance there is a restriction right now with respect to the usage of the words "architectural technologists" by an individual practising architecture currently under the regulation of the Architects Act.

For those three points, the third of which has two subsections, we believe this bill is in order, and we would respectfully request that you consider it to be so and allow it to be forwarded to the appropriate committee for argument and discussion at that point in time.

Mr O'Toole: May I respond, just in the pure interest of making sure we're doing the fair thing? My response would be that, taking the formation and evolution of your career, your professional group from 1965, dealing with the Architects Act in 1969 where they allowed you to use the term, it was an extended privilege, if you will, from a previously established protocol in the term "architect," they allowed you to say architectural technologists, and we've moved through that process and now we're actually moving away from that process.

The thing about it technically, I know there's — as my peer Mr Stewart said — a bit of a turf war here. But purely, you seem to say there was an extension made in the first case, forget about the other technologists and stuff, talk about your own case; and now you're really actually reversing that same decision. When you look at purely that on its own merits, you're actually saying they cannot, without being members of your association, use a term that hitherto would have been permissible.

Mr Silipo: No, you can't use it now.

Mr Hornblow: I would disagree. You can't use it now, because it would be in violation of the regulations; as well as, just to add to it is, when you read the section —

Mr O'Toole: Can I get the counsel to answer that? Is that true, they couldn't call themselves an architectural technician?

Ms Klein: No. I disagree with that. I think an architect could use those terms.

Mr O'Toole: Yes. So your response is absolutely incorrect. Our counsel is saying, "I'm an architect, and if I want to advertise myself as an architectural technician or something to make it sound more techy in my newspaper ad, then I'd be at perfect right to do that without belonging to your association." So that's a restricted privilege. If I take the advice of our trained counsel, how can I go against that? I'm neither a lawyer nor a technologist nor an engineer. I'm actually just an MPP.

Mr Silipo: You're in better shape than most of us. Count your blessings, John.

Mr Hornblow: I'm in the same boat.

The Chair: I would remind all members of the committee, we will hear from the Ontario Association of Architects next. Are you completed with your line of questioning, Mr O'Toole?

Mr O'Toole: I think I'm satisfied that there are some definitional problems here between our counsel and your counsel as to the current privilege of an architect in their

entitlements. This is about two things: process, first; entitlements is sort of a secondary issue. That's really not what we're dealing with. It's process here.

Mr Silipo: I thought I understood this, and now I don't think I do. I have to keep reminding myself that I'm not here to decide on whether I agree or not with this amendment, but it's difficult to make that decision without understanding fully what the nature of the amendment is. I expect when we hear later from the Ontario Association of Architects that we'll have the fuller picture in terms of the variety of positions on this.

But I had thought I'd understood up until this point, until we heard in that last exchange from legislative counsel, that in fact right now what we have is a regulation under the Architects Act that gives exclusive use of the term "architectural technician" and "architectural technologist" to members of the Association of Architectural Technologists of Ontario. But I think legislative counsel doesn't agree with that. I think I need to have that clarified first of all, if I could.

Ms Klein: The Architects Act makes it an offence for anyone to use the term "architect" or a variation. The Architects Act then gives exceptions to that, and it says it is not an offence for a member of the AATO to use the term "landscape architect." It doesn't say they have exclusive right to it; it says they're not committing an offence if they use those terms.

Mr Silipo: So in your view, someone who is an architect could then also use the term "architectural technologist"?

Ms Klein: Yes.

Mr Silipo: All right. I want to go back to what I think is also the broader issue, and just be clear, because in the notes that we have — and this is where I picked this up before when I asked this earlier — in the proposed legislation, there are also, I gather, provisions dealing with giving the AATO the right to govern and discipline its members. I just need to hear either from members of the association or from legislative counsel how that differs from what exists now. Is there no legislation that covers that right now? Are they covered in some way under the Architects Act, or what's the status of that situation, because I would have thought that's an issue we would have heard something about?

Ms Klein: Right now, the association exists. They're a corporation under the Corporations Act, and they have letters patent. They have bylaw-making powers and they can regulate their members.

1630

We put into the private legislation a provision that they can regulate and govern their members, and we put into the private legislation the requirement that the association become a special act corporation, because the privilege that they're getting in the private legislation is the restricted designation. They are getting the right to use terms, and the private legislation makes it an offence for anyone else to use these terms. I think those are generally privately prosecuted, but they're none the less offences that are created by the private legislation.

As a result, we structure the private legislation so that — let me backtrack a bit — but it's private legislation and this organization is not governed by the govern-

ment in any way. Once they get their private act, they walk away and they govern their members and they do whatever they want and they can prosecute people who aren't members of the association for using the term that's restricted.

I think it's some sort of governance measure that we make this body, which is now a corporation under the Corporations Act, a special act corporation. We put their objects in the private legislation. We put their bylaw-making power in the private legislation. Therefore, if they want to make changes to their powers or their objects, they have to come back to the Legislature, get another private act amending their legislation.

That's the only overseeing that the government does. As I said, they have the power now to govern and discipline their members, but we build it into the legislation because what the legislation gives them that they don't have now is a reserve title.

We do lots of private bills like this. Two were passed in 1996 so far. Registered Graphic Designers of Ontario got the exclusive right to use the title "registered graphic designer." It's not the nature of the bill that's strange. In this case it's just the fact that there's the conflict with the Architects Act, which is public.

Mr Silipo: The reason I asked that is because I wonder then where does the question get asked about whether the governance structure is appropriately dealt with that way or as it would be appropriately dealt with in a different way under a public act? That, to me, is an issue that again I haven't heard anybody comment about, and it seems to me that would be something that would go more to the nature of whether a piece of legislation should proceed as a private bill or a public bill, shouldn't it?

Ms Klein: The decision is made whether you want to govern a class of professionals by public legislation. That's usually done when in the legislation you are not just restricting the title in the public legislation, but you are restricting the area of practice. You have all the health professionals legislation, the Architects Act, the Law Society Act, Public Accountancy Act and professional engineers. These are the publicly governed professions that have exclusive rights to an area of practice. Nobody can practise medicine except a doctor. It's a corollary to that that nobody can call himself a doctor except a doctor.

This private legislation doesn't give anybody an exclusive right to an area of practice. All it gives them is a title. Architects have an exclusive area of practice.

Mr Rick Bartolucci (Sudbury): I won't belabour the point, but I really don't see the significant difference between what's been passed already in 1996, what was passed in 1984 and what their suggestion is here. We will hear obviously a differing opinion when the Ontario Association of Architects comes before us, but in making our decision, and without belabouring the substance of the bill, I think we're here to simply decide whether or not it goes to a private bill, and at that time, I believe that it's incumbent upon us to debate the substance of the bill.

I would suggest we hear from any other witnesses we have and then make the decision whether or not we want this to go to a private bill, as opposed to belabouring the technicalities of the bill — although I do agree with Mr

Silipo that there has to be some understanding. I think we've got clearly two defined positions, and we'll hear from a third and then let's make our decision. Then, when it comes before the House, we will debate the merits of it, either for or against.

The Chair: Are there any other questions or comments for this panel? Seeing none, thank you very much for your presentation.

I call forward now the counsel for the Ontario Association of Architects, Mr Andrew Lundy. Welcome to the standing committee on the Legislative Assembly.

Mr Andrew Lundy: I appreciate the opportunity of being able to address you today. I have promised to be very brief. I promise to be brief really because on the issue of whether a private bill amends the Architects Act, I agree entirely with the submissions made by the legislative counsel and I see no need to repeat that. I've also had the opportunity to review the submissions made by the Attorney General and I endorse entirely those submissions, which have been presented to you.

Let me also be perfectly clear that the Ontario Association of Architects does not wish to block the passage of a bill like this. In fact, we have made one proposal which will address the concern, a four-line proposal which we've asked to be inserted in the act and as presently drafted would address the association's concern. That proposal is set out on page 5 of the submissions of the Attorney General — page 5 from the beginning, or page 2 if you go to the attachment pages, which is three pages in.

All that we have requested they add to the bill as presently drafted is a subsection 9(3), making it perfectly clear that subsection (2) doesn't apply to an architect or persons who are entitled to use the title "architect" under the Architects Act, because in our respectful submission, architects are entitled currently, according to the Architects Act, to call themselves architectural technologists or technicians.

In that respect, that slight amendment — and this is just in substance; the wording doesn't have to be precise, but in substance, the idea — would alleviate the concerns of the Ontario Association of Architects. So we're not attempting to block passage of the bill; we're requesting a four-line amendment.

As far as the issue of "landscape architect," which has been raised by some members of the committee, it's understandable, in my respectful submission to the committee, that there was no protest from the OAA at the time of the passage of those bills or from architects in general, because there would not have been a belief that the term was ever used by an architect. You've heard submissions made by my friends who appeared just prior to me that they don't believe that architects do use that, and I'm here to say that yes, architects do, and they are entitled to, and it is not, in my respectful submission, contrary to the regulations of the Architects Act for an architect to call himself or herself an architectural technologist. I simply disagree with my friends' assertions, as submitted in their paper and made to you today.

1640

The regulation that my friend talked about does not say "architect"; it says "holder of a certificate of practice." It does not say "architect." In section 49 of the regulation,

which is the last page of my friend's submission to you, where section 49 of regulation 27 — without the entire act, it's very difficult to take you through what a holder of a certificate of practice is and how that is distinguished from a person who can use the term "architectural technologist." But note paragraph 6. It says, "Except in the case of a corporation whose name includes the word 'architect'...." It doesn't say "a person."

What could happen right now is that a holder of a certificate of practice under the Architects Act would have a certificate of practice and licence to engage in the practice of architecture, and they could choose, for reasons of their own, because of a market niche or otherwise, to, in a separate business entity, use the words "architectural technician" or "architectural technologist." It would not be an offence under the act for an architect to do that. It's a corporation that they're talking about under the regulations, not an architect.

I think it's appropriate that I respond to questions, if there are any. Those are my submissions.

Mr O'Toole: I appreciate some of the clarifications in the corporate entity of the function we're talking about. I always want to keep the focus on process here, and in process it's the restrictive aspect I'm looking at. I asked the question of the previous group and I will ask pretty much a similar question. In your view, is it a more professionalized form of training in the case of an architect? Maybe this is a little bit touchy, but it's germane to the restrictive aspect.

Mr Lundy: First of all, I acknowledge that it perhaps is touchy. I also acknowledge your earlier questions when you characterized it as a turf war.

Mr O'Toole: That happens everywhere.

Mr Lundy: It's a term, but it may be that it's the root of a long carrot going down there and we might be at the root.

To answer your specific question, the training to be an architect is vigorous and rigorous. The only thing my friend didn't mention when he set it out is that there is an extensive examination. You must not only spend the five years in university and satisfy the practice requirements under the Ontario association, the Architects Act, but you also must pass intensive examinations; and they're not examinations that many people pass, I can tell you that. There are members who have satisfied the first two requirements who have written the exam five, six, seven times and can't pass, and there are an awful lot of them.

Mr O'Toole: That's really the thrust of my question. You're sort of answering the whole question. It comes to the certification. This is really germane. If I took the five years of architecture and failed the architectural certification examination, could I then write or would I be privileged to write the technician's exam?

Mr Lundy: I can't speak to that.

Mr O'Toole: That's the question. The last part of it is this: I've worked with a lot of engineers and there was always the dispute in the workplace that one guy had the seal and the other one didn't, it was that simple. I mean, whether or not he was smarter, it depended on the given day of an exam, really, and training. Can a technician do the same functions as an architect? That's the issue. Can I, regardless of what the sign on the business is, sell a

service the same as the two classifications we're talking about?

Mr Lundy: The answer, in my submission, is no. By legislation, architects have exclusive jurisdiction, and only by way of exception under section 11 of the Architects Act is any member of the public entitled to build certain buildings. Engaging in the practice of architecture is a defined term under the Architects Act. Currently, very loosely, unless it's the design of a building over 600 square metres, I believe, and there are certain A, B, Cs and Ds of that exception, if the building's under 600 square metres, then anyone — that is, you, I, an architectural technologist or an architect — could design those buildings. But over 600 square metres, only an architect.

Mr O'Toole: You can only have the seal.

Mr Lundy: That's correct. By way of analogy — and I acknowledge it's not particularly apt for one reason — it's akin to paralegals suggesting that a lawyer could not call himself or herself a paralegal, if he or she should choose to, except it would be —

Mr O'Toole: Why would they?

Mr Lundy: Exactly. That question is more apt for that situation, in my respectful submission, with no disrespect meant to the paralegals, who serve a very useful function. But architects are much more likely than the analogy I've put forward to call themselves that.

Mr O'Toole: My final comment: I'm not trying to trivialize this, because I know its implications beyond the architect argument. If I'm a nurse practitioner, for example, and I'm doing many of the same things as a doctor in a specific area, does that mean I can call myself a doctor?

Mr Lundy: No, you can't obviously.

Mr O'Toole: It may be a stretch to do that, but when you look at a way to amend existing public acts by these little modifications, it could get a little dicey.

Mr Lundy: Yes, I appreciate that.

Mr Silipo: Your association doesn't have any concerns around any of the other provisions of this legislation, particularly the ones around governance and discipline?

Mr Lundy: No.

Mr Silipo: Let me ask you the same question I asked the other group, which is, besides the two associations, in your view does anybody else out there have any interest in this issue, in the general public?

Mr Lundy: Not to my knowledge.

Mr Silipo: I see some people in the audience nodding, but I don't know who they are.

Mr Lundy: OACETT, The Ontario Association of Certified Engineering Technicians and Technologists.

Mr Silipo: Are we going to be hearing from them?

The Chair: Not today.

1650

Mr Grimmett: I'm just a country lawyer and I've never dealt with this act before in my practice, but I'm going through the submissions made by the counsel for the Legislative Assembly and also the counsel for the applicant and I'm having difficulty finding in the material I have from the Architects Act anything that gives OAA members the exclusive right to use the term "architect" in combination with other words. Is there material I don't have here that I should see? Are you basing your asser-

tion that architects have the right to use the terms "architectural technologist" and "architectural technician" on the custom within your profession?

Mr Lundy: No. The relevant section in my submission is subsection 46(2) of the Architects Act. That provision provides that, "Every person who is not a holder of a...certificate of practice or," let's say, is not entitled to engage in the practice of architecture and who uses the title "architect," which isn't applicable, or who uses "an addition to or an abbreviation of the title 'architect'...an occupational designation, or a term, title, addition or description, that will lead to the belief that the person may engage in the practice of architecture...is guilty of an offence...."

The relevant provision, in my submission, would be subclause (iii) under clause (b). Is the word "architectural" a word which when used would lead to the belief that the person is entitled to engage in the practice of architecture? Courts have held in prosecuting people who have used the word "architectural" in bylines under their name in conjunction with the use of architectural design — prosecutions under this offence have occurred because the court has said "architectural" is "a term, title or description, that will lead to the belief that the person may engage in the practice of architecture."

That ties into the issue of landscape architecture. Will anybody really be confused that a landscape architect is an architect? I don't think so. But on "architectural technician" and "architectural technologist," it's the association's position that there will be some people who will be led to believe "that the person may engage in the practice of architecture." That's why the specific subsection (8) was created. Does that respond to your question?

Mr Grimmett: I agree with everything you just said. However, you have not shown me where in the act it says that OAA members have the exclusive right to use the term "architect" in combination with other words. You haven't convinced me. You've convinced me that people can be prosecuted for using the word "architect," and I agree that they should be, if there's a creation of confusion to the public, but you haven't convinced me that OAA members have the exclusive right to use "architect" in combination.

Mr Lundy: If I may just quickly attempt to respond to your question, subsection 11(1) of the act answers your question:

"No person shall engage in the practice of architecture or hold himself, herself or itself out as engaging in the practice of architecture unless,

"(a) the person is licensed...;

"(b) the person is the holder of a certificate of practice...; or

"(c) the person is the holder of a temporary licence under this act."

That section must be read in conjunction with the offence section that says every person who holds themselves out by using "a term, title or description, that will lead to the belief that the person may engage in the practice of architecture" is an offence. You must read section 11 in tandem with section 48, which is the offence section. Section 11 is the exclusivity section. Section 48 is the offence section.

Mr Grimmett: You still haven't convinced me. I'll just leave it with that.

Mr Ron Johnson: Very briefly, back to the point — and I think that when we start getting into the context of the bill we're getting offtrack — we have to decide whether or not it's in order. That's our primary goal. Is it your belief, is it safe to say that in your opinion you agree with the Attorney General, you agree with legislative counsel that this bill is out of order?

Mr Lundy: Absolutely.

The Chair: Thank you very much, Mr Lundy, for your presentation.

We now have a brief presentation by counsel representing the Ministry of the Attorney General.

Mr John Twohig: My name is John Twohig. I'm counsel with the Ministry of the Attorney General. The Attorney General is the minister responsible for the Architects Act, along with several other self-governing professions. It is the position of the Attorney General, and my instructions are given to me today through his parliamentary assistant to be here to advise you, that we agree entirely with the position taken by legislative counsel.

The only issue before you today is whether you want to use this process, the private bill process, to derogate from, to take away from a right which has been given under public legislation. There may well be good public policy arguments as to why this whole area should be revamped, should be reformed, but in my submission those should take place through the public process of public legislation.

You've heard all the arguments today. There's really no point repeating them. I can tell by your questions that you appreciate the point. Erskine May, attached to our submission, provides really the only guidance we have, and it says you should not take this process lightly, that if you intend to amend public legislation, you should do it in a public process. If you're going to do it in private legislation, you'd better do it explicitly, and that's our second point. This bill does not do that either.

I really have no further submissions, unless you have questions.

The Chair: Any questions to Mr Twohig? Seeing none, thank you, Mr Twohig, for your presentation.

Are there any questions of any of the presenters?

Mr Silipo: Not of the presenters, but I did want to ask the clerk a question.

The Chair: We have representatives here from the Ontario Association of Certified Engineering Technicians and Technologists, who are very interested in this bill. I just wondered if any committee members had any questions of those representatives.

Mr Silipo: Mr Chair, if it's agreeable to the committee, if the gentlemen want to say a few words on this, I think it would be useful for us to hear them.

The Chair: Okay. Welcome to the committee, gentlemen. Would you please identify yourselves for the purposes of Hansard?

Mr Bruce Wells: I'm Bruce Wells, the executive director of the Ontario Association of Certified Engineering Technicians and Technologists. For obvious reasons, we go by the name OACETT. Bob Mitchell, who, as

many of you know, is a previous MPP, has worked with me at OACETT for almost 10 years now, since he was defeated in the House; he is a special assistant to me who helps me with legislative matters.

OACETT is a 19,000-member association of technicians and technologists. We work under the OACETT act which this Legislature approved in 1984. We have the right to title for three designations: "certified engineering technologist," which is abbreviated CET; "applied science technologist," abbreviated ASCT; and "certified technician."

We're not here to talk about the legal issues in this. We came primarily as observers. We do have some concerns with the bill. If you move it on to the next committee, we have some briefs and we will have some things to say at that point.

Let me just clarify from a legal point of view that if you graduate from Mohawk College or Algonquin College or Seneca College or Durham College, if you came out of the engineering technology programs with a diploma, you are perfectly entitled to use the term "engineering technologist" or "engineering technician." OACETT has no control over those terms.

If you have gone through the appropriate academic criteria we have; if you have handled the work experience we require, which is two years; if you have come in with the proper credentials from either professional engineers or certified engineering technologists; if you have passed our law and ethics exam; and if our registration board approves your criteria, you would get the designation "certified engineering technologist," "applied science technologist" or "certified technician."

In terms of the arguments you're dealing with today, it was brought up in terms of OACETT — I would just make it very clear to you that we do not control the terms "engineering technician" or "engineering technologist." We do have control over "certified" with the term "technologist," and that's the key.

That's what I'd say in terms of the discussion. Certainly Mr Mitchell and I would be happy to answer any questions you might have in terms of our views on these issues, but we didn't really come to get into the legal argument. We came as observers, really.

1700

Mr O'Toole: With all respect, I recognize the point and the struggle. You cannot call yourself, without some redefinition, an engineer.

Mr Wells: The legislation of the Professional Engineers Act defines the term "professional engineer," and it defines what can be done by a professional engineer. The legislation does not talk about the term "engineer" or "engineering," and OACETT members do not call themselves engineers; they are certified engineering technicians or certified engineering technologists. What is restricted is professional engineering, and by definition, that's a very narrow scope of the engineering field. I think your Attorney General's department has figured that it's maybe 10% of the engineering field.

Mr O'Toole: Yes, who are actually professionals.

Mr Wells: The rest of it we can do, but we cannot do professional engineering and our members don't hold out to be trained to do professional engineering. They are

trained to be applied engineers, not professional engineers in the design sense.

Mr O'Toole: I don't want to belabour it, but it is peculiar, getting back to why we're talking about whether it should go forward in this forum. Let's just work on the term "professional engineer." To me, that implies you can do a range of things, and a certified engineering technologist has a more limited range of things they can do.

I suspect that public understanding, the need to delineate and have the proper clarity and terminology, is what's at issue here. Because of the age of the act, I suspect, the term "architect" has evolved to include — and I'm sure they're very skilled people; it's not my job to decide whether they are or not. Do you understand, though? It's exactly that same. If I were an architect and today's marketing made it much more techie sounding if I said I was an architectural technologist, implying it was even more technical, I should have that privilege, I think, as an architect. But to imply I had a hierarchy of knowledge to say I was an architect when I wasn't, but was an architectural technologist — you see, there's a difference there. It's the terms that maybe were drafted in the early 1930s, or whenever they got the act started. It's evolved and it's a problem. I understand the need.

Mr Bob Mitchell: May I, Mr Chairman, make a comment? You raise a good point. Do you have a community college in your —

Mr O'Toole: Absolutely. Durham College, one of the best in North America.

Mr Mitchell: They probably graduate architectural technologists. They probably graduate architectural technicians.

Mr O'Toole: Yes.

Mr Mitchell: What are they going to be called after this bill?

Mr O'Toole: Doesn't the current bill allow them to call themselves technologists and technicians? So what's the problem? It's who collects the dues, is the problem.

Mr Mitchell: My understanding of the AATO proposal is that no one may hold themselves out to be an architectural technologist or an architectural technician without being a member of AATO. That's my understanding of the act. Am I right?

Mr O'Toole: We seem to have gotten right back to first base here. For the clarity of counsel — we've made this unnecessarily complicated — under the current Architects Act, the technicians are allowed to call themselves architectural technologists and architectural technicians. If we don't do one thing, they can still do that.

Ms Klein: The members of the association can. I don't know if you can do that right on graduation from community college.

Mr O'Toole: You have to write the exam, pay the dues.

Ms Klein: You have to be a member of the association. The Architects Act allows members of the association to use those terms, yes.

Mr O'Toole: Does that answer for your sake, Bob?

Mr Wells: Let me make it very clear. We don't have any fights with the professional engineers of Ontario. We meet with them monthly; we work together; we have

been asked for input on their operations. Yes, we may disagree where the boundary between professional engineering and engineering is in areas, but we're going to work that out. The purpose in our being here today is tied in as observers and to make clear to you, we do not have control over the title "engineering technician" or "engineering technologist."

Mr O'Toole: "Certified" is your difference.

Mr Wells: Yes. Now, if you want to get into a debate on where we should go in the next 10 years in this country, if you'd give me two hours I'll tell you what we should do, but I've already done that with some of your ministers this morning. That's a different issue.

Mr O'Toole: That brings us full circle, because what we really are debating, as Mr Johnson has said, is whether this is the correct forum for doing it. I do not believe it is, personally. Not in any way to insult, but process is our responsibility, and public process is what public acts are about. With no prejudice, that's my position.

Mr Mitchell: I think it's fair to say that as an association, we really do not object to AATO wanting to do their own legislation. I think it's fair to say we have absolutely no problem with that. Our problem is with the use of the term "architectural technologist" when, as I say, they graduate architectural technologists from the colleges and so on. We use the word "certified." The suggestion then is, why do they not have a definitive term for their act?

Mr O'Toole: I won't prolong it, but you're having to have another group that starts with a C now, CAATO. Do you understand what I'm saying? It's another dues membership.

Mr Dave Boushy (Sarnia): Mr Chairman, are there any more presentations?

The Chair: No, and after this we're going to have a general discussion on the issue and, hopefully, lead to a conclusion to this discussion.

Mr Boushy: After hearing all the delegations, I don't think Bill Pr40 should proceed any further. If you are ready, I'd be glad to make that motion.

The Chair: We'll get into that discussion. First of all, I want to thank very much the representatives of the certified engineering technologists and technicians.

Mr Wells: It was our privilege to come down. We hope to talk to you again on other issues.

Mr Silipo: Mr Chair, maybe you were intending to do this, but could we have the clerk explain for us and for the record what would flow from a decision by this committee that either this should proceed as a private bill or should not proceed as a private bill? I'm particularly interested in hearing what the differences would be in terms of the public's right to be involved in the discussion, which to me is primary. There's sometimes some misconception that a private bill means you do it behind closed doors, and I think we all know that's not the case. But I know that there are some distinctions between the two. I think it would be useful if we just had those explained.

The Chair: That may be very helpful to this discussion.

Clerk of the Committee: I'll answer the second question first. In order for somebody to proceed with

private legislation, they must advertise for four weeks in the Ontario Gazette and in a local newspaper. This organization did do that, and the local newspaper was the Globe and Mail. In their advertisement there is a line in there that anybody who has any comments on the bill is to contact my office. We keep track of everybody who comment. For today, we did speak to all those groups and they either all appeared or were in the room today. There isn't anybody who commented, who had any interest in this bill, who is not here today.

This committee, I guess, has two options. They could either decide this is the proper subject matter for a private bill or that it is not the proper subject matter. If they decide it is the proper subject matter for a private bill, we would then prepare this bill for introduction. It would be introduced in the House. It would then be referred after first reading, as all private bills are, to the standing committee on regulations and private bills to be determined on its merits.

If this committee decides it's not the proper subject matter for a private bill, the applicant has two options: The first would be to stop right there and proceed no further; the second, to amend the draft bill so it does comply with the standing orders and is the proper subject matter, and at that point then continue to get that bill introduced.

Mr Silipo: Could it not also be introduced by a member of the Legislature under public business?

Clerk of the Committee: I suppose, not actually looking at the subject matter, but one would presume that perhaps it could be the proper subject matter for a private member's bill and go that route. I would have to double-check on that.

Mr Silipo: I thought that would have been the other route.

Clerk of the Committee: It could be the proper subject matter for a private member's bill. They would have to find a sponsor and it would go the normal ballot rotation.

Mr Silipo: And of course that would follow the process of first reading introduction and second reading debate, with the potential, if it passed, to be referred to a committee for debate.

Clerk of the Committee: Yes.

Mr O'Toole: I need clarification on that. That almost contradicts the whole afternoon. This is a private member's bill, is it not? Oh, it's a private bill. Pardon me.

The Chair: It's a proposed private bill. It hasn't even been introduced as a private bill in the House yet.

Mr O'Toole: I understand. I apologize.

1710

Mr Silipo: Mr Chair, one other clarification. If it were to proceed as a private bill, if and when it got to the private bills and regulations committee, is there an automatic opportunity at that point, or is that subject to the committee's decision, to hear from all of the parties who have an interest in this subject matter and then determine it on the merits?

Clerk of the Committee: The process that happens then is that everybody who has contacted my office is contacted. While it is up to the committee, as in all committees, to decide who will be heard, it tends to be the

practice of the private bills committee that anybody who requests to be heard is normally heard.

Mr Silipo: So that's where presumably the discussion about the substantive matter that we sort of got in and out of today would be able to be debated and determined.

Clerk of the Committee: Right. In the normal scheduling on private bills, for any bills that tend to have a number of interested parties we tend to try not to schedule too many bills like that at one point so that it has a fair airing at that point.

The Chair: Mr Stewart, did you have a question?

Mr Stewart: Not a question, Mr Chairman. What I was going to do was move a motion, if it would be acceptable at this point.

The Chair: I still have one of your colleagues who wants to ask a question. Would you be prepared to wait?

Mr Stewart: Absolutely.

Mr Tom Froese (St Catharines-Brock): Just for clarification, this can proceed in the path that it's going now if certain amendments were made to it to ensure that it's under the right format? It can be a private bill, continue on, if the proper amendments are made.

Clerk of the Committee: Let me just backtrack. In essence, yes, but let me backtrack to what I said right at the beginning of the meeting. There is no right or wrong answer to the question that's before you today. It's strictly a procedural question. If you decide that this bill in its current format is the proper subject matter, it can continue in its current format and be introduced. If you decide it's not, they may decide to amend it, and if they amend it, depending on how they amend it, it may at that point be the proper subject matter for a private bill and wouldn't have to come back here. But you could decide today that this bill in this form is the proper subject matter for private legislation.

Mr Ron Johnson: Following up on that, just an explanation of the way I'm going to be voting on this one. I'm satisfied that the bill is out of order and does not belong at this committee at this stage, so I will not be supporting it, but the amendment proposal is one that I would like to see followed up at a later date if in fact it does get rejected.

The Chair: Are there any further comments relating to the issue at hand before we move to a motion? I think it would be appropriate at this time to have a motion to determine whether or not this is the proper subject matter for a private bill.

Mr Stewart: Due to the fact that this can proceed to the Legislature in other ways, so that we're not putting a total stop on it by any means, I would move that the application of Bill Pr40, An Act respecting the Association of Architectural Technologists of Ontario, should not be allowed to proceed as a private bill.

The Chair: Mr Stewart has moved that the proposed Bill Pr40 is not the proper subject matter and should not be allowed to proceed as a private bill. Is there any discussion on the motion?

Mr Boushy: I second the motion.

The Chair: It doesn't require a seconder, I am advised.

Mr Silipo: I'm going to vote against that, and I want to explain why. It's not because I don't necessarily agree

with what — I think we've sort of gone all around this, and on the substance of the issue I have some concerns around whether this piece of legislation should be enacted as it's been proposed. If I were dealing with the substance of it — and I don't sit on the committee that would deal with it if it proceeds as a private bill — I think I would have some concerns around the bill without the proposed amendment that's been suggested.

But it's become clear to me this afternoon that this is not a piece of legislation under which there are a lot of outstanding concerns and issues. That is, it's not like there are five or six different big issues that arise out of this proposed legislation over which there would be a lot of concern by a lot of members of the public, unless of course we haven't been given the benefit of that advice.

It seems to me that while there's clearly some disagreement on one particular aspect and one important aspect, and while on that one at this point, if I had to make a decision today, I would make it not in favour of those who are proposing this legislation, on the other side I've always been and continue to be a very strong advocate that there surely have to be, in addition to the ways we have now in place, additional ways in which legislation can be looked at, considered and even passed.

When there are issues like this that are fairly focused and can be looked at within the context of all of the processes of a legislative committee, that afford all of the parties that are interested an opportunity to be heard, to make their case, and for parliamentarians to listen to them, consider the situation and make a decision, as I believe would happen in this case if this proceeded as a private bill, I am less concerned about the potential conflict in terms of the principle of public legislation not being amended by a private bill.

That principle is one that I certainly support, but I think we have to be careful about not going to such an extreme that we then say we have to be solely bound by that in a way that limits the possibility for changes. It's quite clear there are a number of things in this proposed legislation that many of the parties agree with. So it's conceivable that this bill could proceed as a private bill. That amendment that's been requested by some of the parties, made at committee, even though it may not be what the proponents want or prefer, I think wouldn't be bad process. In fact, I would argue that would be pretty good process because it's a very clearly defined issue. If there were five or six different issues, and particularly if those issues impinged in a much broader way on the public's rights and the public's interests, I think I would certainly side more with the argument that said it shouldn't proceed other than as a public bill.

In this case, as I say, I'm less concerned about that concern and that conflict because the issue over which there is disagreement is pretty clearly defined and I think a committee of our peers dealing with this issue could sort its way through it and make a decision and decide one way or the other, recommend an amended bill or not, or recommend the bill as proposed. So on that basis I would be comfortable with this proceeding as a private bill.

Mr Grimmer: I will not be supporting Mr Stewart's motion, and I want to explain why. Mr Twohig has

indicated that we as parliamentarians should not be allowing a process where a private bill can be allowed to proceed and amend a public act. I have not been persuaded that this private bill would in fact amend a public act. On that basis, I'm prepared to allow the private bill to proceed. I think the public will have an opportunity to comment, so I don't see the concern about the private bill not allowing public comment either. So those are my reasons.

Mr O'Toole: I just want to clarify. I thought I heard Mr Silipo make the argument that the private bill process is not the correct way to amend a public act, and you agreed with that.

Mr Silipo: Normally, yes.

Mr O'Toole: I would suspect, that being said, that you would be voting in favour of Mr Stewart's motion.

Mr Silipo: No.

Mr O'Toole: The reason is because that is a contradiction. I'm not trying to be smart with you, but technically I'm agreeing that amending a public act, this process, is not the correct process. Forget about the issue; it's process. Those two things that you said — you agree that this is not the correct format, and you're going to vote against the motion — that's a contradiction. It defies all logic. I'm not criticizing you, but you are running for the leadership. Honest to goodness, I'm serious. That doesn't make any sense to me, and I'm only making a point with no prejudice involved.

Did I understand you to say that you believe that the private bill is the wrong process —

Mr Silipo: Would you like me to answer that?

Mr O'Toole: Yes.

Mr Silipo: I'd be happy to.

Mr O'Toole: I'm struggling.

Mr Silipo: I tried to make the point that normally I agree that a public act should only be amended by a public bill.

Mr O'Toole: Exactly.

Mr Silipo: I also made the point that I believe as a parliamentarian there ought to be more ways than one to deal with legislation. I made the point that particularly in a case like this, where the issue at hand is very clearly defined, where there aren't five or six different major issues to be worked out through this piece of legislation — there is really only the one area of disagreement — that is an area where I feel comfortable in allowing a private bill to proceed, because that issue, I believe, will get the full public airing, through the process that a private bill will go through, that would be required to satisfy the concern I would normally have in terms of how you go about amending public bills.

Mr Stewart: The reason I moved this motion was that I believe this is a legal matter, and I think we have to accept counsel of the legislative counsel as well as the Attorney General. If I thought for one moment that this type of bill would die on the table, I would probably not support my own motion, but it won't. It can then become a private member's bill. If it gets the support it can go to

the public, because this will have, in my mind, an effect on other professions as well. I think the public should have that type of input and go the regular channels. That is my own explanation of why I moved it. I think we're talking a legal matter here; we're not talking other issues that may be classed as motherhood or otherwise.

The Chair: Seeing no further discussion, are the members prepared to vote on this motion?

Mr Stewart has moved that this proposed Bill Pr40, An Act respecting the Association of Architectural Technologists of Ontario, is not the proper subject matter for a private bill. All members in favour of the motion, please raise your hands. Opposed? The motion is carried.

Mr Bartolucci: They called in the troops.

Mr Silipo: Well, it was a nice try.

The Chair: We have one other item on our agenda today, and I'd like to explain to members of the committee where it came from. I had an informal discussion with the Speaker of the House yesterday relating to an issue that has been brought to his attention by a member of the Legislature, requesting that he be allowed to —

Interjections.

The Chair: Could I call the committee to order. There is another item on the committee's agenda today, and that is the issue of laptop computers. I'd like to inform members how that came about.

I was speaking informally with the Speaker yesterday, and it's my understanding that a member of the Legislature has made a request to him that he be allowed to use a laptop computer in the chamber. The Speaker is reserving final judgement on this issue pending the advice of this committee.

We've prepared, on very short notice — thank you to Peter Sibenik — a bit of information, and I think all committee members have been presented with it. I would like to initiate a discussion on this issue today if members are so inclined. If not, I suppose their option is to defer it until next week, when we may have had more time to give consideration to the issue.

Mr Miclash: Yes, I think we should maybe ask for deferral.

The Chair: Are all members in consensus that we would defer this until next week? All right; we will defer this issue till next week. Any other points of business?

Mr Bartolucci: By way of information only, is Mr Hastings a member of this committee still?

The Chair: He is indeed, but he was subbed off for the day because he was bringing forward the private bill being sponsored.

Mr Bartolucci: Had he chosen not to sub off, he could have voted on this, could he not?

The Chair: Technically, the clerk is advising me that yes, he could.

Mr Bartolucci: All right. That's amazing.

The Chair: Appropriately, he did not.

This committee stands adjourned until next Wednesday afternoon.

The committee adjourned at 1724.

CONTENTS

Wednesday 5 June 1996

Application for Bill Pr40,	M-161
Steven Offer, counsel, Anderson, Sinclair	
David Hornblow, president, Association of Architectural Technologists of Ontario	
Virginia MacLean, counsel, Cassels Brock and Blackwell	
Andrew Lundy, counsel, Brunner and Lundy	
Bruce Wells, executive director, Ontario Association of Certified Engineering Technicians and Technologists	
Bob Mitchell, special assistant, Ontario Association of Certified Engineering Technicians and Technologists	

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

*Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

*Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

Hastings, John (Etobicoke-Rexdale PC)

*Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

*Silipo, Tony (Dovercourt ND)

*Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Ouellette, Jerry J. (Oshawa PC) for Mr Hastings

Also taking part / Autres participants et participantes:

Hastings, John (Etobicoke-Rexdale PC)

John Twohig, counsel, policy branch, Ministry of the Attorney General

Clerk / Greffière: Lisa Freedman

Staff / Personnel:

Susan Klein, legislative counsel

Peter Sibenik, procedural research clerk, Office of the Clerk

20N
XC20
-L20



M-17

M-17

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 12 June 1996

Journal des débats (Hansard)

Mercredi 12 juin 1996

Standing committee on the Legislative Assembly

Use of computers in the House

Comité permanent de l'Assemblée législative

Emploi d'ordinateurs dans la Chambre



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on your computer

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. For a brochure describing the service, call 416-325-3942.

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur votre ordinateur

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 12 June 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 12 juin 1996

The committee met at 1533 in room 228.

USE OF COMPUTERS IN HOUSE

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. We have one item of business today, and that is the request of the Speaker to provide some advice to him on the issue of whether members should be allowed to use laptop computers in the chamber.

Peter has prepared some background information for us, which he's circulated to all members of the committee. I'd like to give Peter an opportunity to explain the research he's compiled and to answer any questions members will have, and then have a full and thorough discussion. I realize that many members have strong opinions on this issue. Then hopefully we would lead to having a motion advising the Speaker to do something. At this time I'll turn to Peter and ask him to make his presentation.

Mr Peter Sibenik: I'll be speaking to my memo of June 5 addressed to the committee clerk. I did a short report based on the history, the arguments in favour of and against laptop computers and what some of the policies or rules were in other jurisdictions.

The history of the use of laptop computers or of the issue is fairly short here in our chamber. The first evidence we have of members or somebody using electronic equipment was in 1988, when Speaker Edighoffer made a ruling that cellular phones were not to be used in the chamber, and that had to do with a cellular phone in the gallery as opposed to a member using it.

In 1992, this committee itself reviewed the use of electronic devices in the House and recommended that laptops not be used at all, and that particular recommendation went to the Speaker.

In the following year, Speaker Warner made a statement in the House to the effect that laptop computers and other kinds of electronic devices were not to be allowed in the chamber because they were not consistent with the courtesy and respect members deserved, that is to say, the member who had the floor at the time.

The only other reference I came across was one that happened earlier this year with respect to the standing committee on general government when it was on the road. The Chair of that particular committee, of the evidence subcommittee, made a ruling to the effect that a member of the committee would be allowed to use a laptop, and I believe that is the only occasion on which such a ruling by a committee Chair has been made with respect to a member.

The arguments pro and con with respect to laptop computers: They were canvassed at the 1992 meeting of

the Legislative Assembly committee that I just mentioned, and I've summarized them there. Basically, the pro argument is that there have been advances in technology and if members wish to be more efficient in the use of their time they should be able to make use of this technology. The con argument is that traditions should be respected in the chamber and in committee rooms by extension, that if it's good enough for Westminster, which still does not allow laptops into the chamber or into the committee rooms, it should be good enough for us. That's the other side of the argument.

I did not canvass all the jurisdictions with respect to what their policies were but I did do it with respect to Westminster and four of the provinces, and that includes Ottawa. At Westminster, as I say, laptops are not allowed; however, both the House of Commons at Ottawa and Quebec have in recent years allowed laptops not only into the chamber but into the committee rooms as well, subject to the kinds of restrictions I indicate in this memo: the fact that it should not unduly disrupt or interfere with the member who has the floor.

In addition, I've also taken a look at Saskatchewan. You have a photocopy of what the rule in Saskatchewan is like. That particular rule came into effect on a trial basis in 1992 and it became permanent in 1994. You'll see that there are certain restrictions as to when laptops can be used in the Saskatchewan assembly, namely, in the committee of finance and the committee of the whole.

The only other jurisdiction I canvassed was British Columbia. In that jurisdiction, there really doesn't seem to be a great interest on the part of members of that assembly for the use of laptops, and as a result, it is not an issue in British Columbia at all.

I might say in closing that there's been a fairly marked change since 1992. In that year, no assembly in Canada allowed laptops into the chamber. Since then, there's been a trend line on the part of these jurisdictions I've looked at moving towards the use of laptop computers subject to the kinds of restrictions I speak about in the memo and that you see, for example, in the Saskatchewan rule.

Those basically were my submissions to the members.

The Chair: Thank you, Peter. Questions at this time?

Mr Terence H. Young (Halton Centre): You didn't check the Legislature in Newfoundland or New Brunswick?

Mr Sibenik: No. I didn't speak to any of the smaller jurisdictions, just the ones I've indicated.

Mr Young: In the House of Commons at Westminster, there are other differences in the way they conduct debate etc. Are you familiar with those as well?

Mr Sibenik: What was mentioned to me was the fact that there are no desks in the House of Commons at Westminster so it poses a bit of a practical difficulty, although these kinds of computers are sometimes called laptop computers and you'd think they would be placed on your lap. However, there's no prospect of that particular rule or prohibition being disallowed.

1540

Mr Young: Actually, that term is at this point a bit of an anachronism. It's actually a notebook computer because it's the size of a book. Laptops are bigger, and they don't make them any more etc. But I believe in the House of Commons in Britain, at Westminster, you're also not allowed to read questions or read speeches other than prepared ministers' statements. It's fundamentally a different place than our Legislature to that degree. I don't know if you're aware of that.

Mr Sibenik: No. I can check into this, though.

Mr Peter L. Preston (Brant-Haldimand): Quite plainly, as Peter says, this is a trend line. I'd be very concerned about where the trend will end. Are we going to take our PAs in, our secretaries, just transfer our offices into the Legislature? If the Legislature is not that important, that we can sit there and fiddle-diddle with a laptop computer planning next week's speech, then let's make the Legislature more pertinent. Let's get the garbage out of there, this yelling back and forth. Let's turn it into a debate.

The Chair: Mr Preston, do you have a question at this time, or do you want to wait until we get into this discussion?

Mr Preston: Should we really be doing this, rather than leaving it traditional? There's a question.

Mr Sibenik: Well, uh —

Mr Preston: I guess I was making a statement, Mr Chairman. It really was not a question.

The Chair: Mr Silipo, do you have a question, or do you wish to engage in the debate?

Mr Tony Silipo (Dovercourt): I have a question. I would be interested in knowing if Mr Sibenik is aware of whether in these places where the use of laptop computers is now allowed, whether it's in Ottawa or Quebec City, anybody has done any kind of formal or informal assessment of what the experience has been like.

Mr Sibenik: I have consulted with one person in Ottawa and one in Quebec City. The Speaker monitors it on an ongoing basis, but it's done on an ad hoc basis. If there's a problem, the Speaker will attend to the problem, but my feeling is that it is not much of a problem as far as the presiding officers in those jurisdictions are concerned. There really hasn't been the kind of survey you're speaking to, a systemic survey.

Mr Silipo: Is it fair to say that the situation is such — or maybe it isn't — that on a proportionate basis, the number of people who take advantage of the ability to use the laptops is not great at any given point in time? Or do we know?

Mr Sibenik: I would say that's my feeling, that's right. There are certain members who are just more interested in using laptop computers than others. I don't see the majority of members using laptop computers in either chamber. That's not the case at all.

Mr Young: If it's helpful, my staff has done some research in the other provinces and I'll gladly table the research. It's in the form of a letter I wrote to the Speaker and it refers to the Manitoba Legislature and the Legislatures in Newfoundland and Saskatchewan as well as those the research officer has already addressed.

The Chair: The clerk is actually at this moment taking photocopies of that letter for all members of the committee, so that's in the works.

Mr John O'Toole (Durham East): Are there any staff occasions where it would be beneficial for them to use a computer in the Legislature?

Mr Sibenik: In ours, I know that staff do use laptops.

Mr O'Toole: That's really the point I was trying to establish, that for those who find that methodology appropriate, they do use them today.

Mr Sibenik: The staff do use these things in the course of a committee meeting, with the approval of the committee Chair.

Mr O'Toole: I've been in those committee meetings. It may not be at this time universal. We're looking more profoundly at this, in some moderate way, to introduce perhaps for a trial period that sort of tool into both committee and the Legislature. Have you had discussions with staff, the people at the table and other people who could have a prompter there, quick searches for certain rulings — there are so many uses. Anyone who uses them knows it's an error not to make more efficient use of our time. Are there any people on staff who are interested in making this tool more accessible, more germane to the process?

Mr Sibenik: If there is some wish on the part of staff that they could use it more often, it would be subject to the concerns as to order and decorum being maintained in the course of a meeting, whether it was in the chamber or in a committee meeting. We fall behind whatever the view or the order is from above.

I find electronic means of data search to be very useful. I use it in my office. I have never had occasion to bring a notebook or a laptop here to the committee room, but many research officers have. It's proved to be an efficient way of gathering information and summarizing testimony and observations.

Mr O'Toole: It's a little more reliable too.

Mr Sibenik: Yes, because you'd probably be eliminating one of the steps, the writing out of it. You'd be transcribing directly to a machine. In that sense, you're overstepping one of the steps.

Mr O'Toole: Yes, missing one of the steps entirely. I think that's the point Mr Young and I are trying to make, and perhaps in our remarks we'll make that. I was just interested. Are there staff who really are comfortable with that medium?

Mr Sibenik: There are many staff who are comfortable, yes. There's no doubt about it. There's been a change over the course of the past 10 years, and the staff have become very much computer-literate.

Mr O'Toole: I notice, for example, that at the table Alex and perhaps Lisa use the phone on occasion.

Mr Sibenik: Yes.

Mr O'Toole: Who are they calling? I haven't really received a call from them. This is an electronic device. What are they using it for?

Mr Sibenik: They're using it to call me, for example, and people within their respective offices as well.

Mr O'Toole: I think it's appropriate. You want to get reliable and accurate information, and it's in that context — no politics involved. We have to recognize that we're dealing with volumes of information and the reliability of that information. I'm quite comfortable that with the proper PF key we can access the whole bill and the arguments that have been made and by whom. I think I've made my point. I'm encouraged that there are those staff people who do database searches to come up with protocol and precedents. That's excellent. I'm encouraged.

The Chair: Any further questions for Mr Sibenik? Seeing none, we'll move into general discussion.

Mr Young: The letter I wrote the Speaker sums up my feelings on the issue very closely. It's becoming a bigger issue than I ever thought it would be, although I'm glad it's here, because I think it's a helpful discussion. It's very important that we understand — all the members, not just the government members — that we were sent here to do more with less, and a notebook computer is an extremely valuable tool to help us do that.

With your permission, Mr Chairman, I'll demonstrate. This is my notebook computer, which I actually used on the road with Bill 26 in January. I had the permission of the Chair in our Bill 26 subcommittee. It was no problem whatsoever. It's totally silent. It caused no problem on the road whatsoever. When we came back, the Chair of the committee said he'd prefer I didn't, so that was what initiated this process.

This computer has enough memory to hold about 20 years of Hansard; that's how powerful it is. I do everything on it: I do my correspondence, I do notes to staff, I do virtually anything you can do in this job, except I haven't used it in the House. You can't use it to look for notes for speeches. It's basically just a modern version of pen and paper. That's all it is. I'm not advocating that someone should use it to do other work in the House that they wouldn't be doing otherwise, but everyone knows members sometimes do sign letters while they're listening to debate. That's a greater issue. I don't think this would make any difference.

The comparison to a telephone — to me there is no comparison. It has no more in common with a telephone than an ordinary book, other than the fact that it has a battery in it. There's no comparison to a telephone, so I really don't understand that.

If you're interested, Mr Chairman, in a demonstration, I can show you how it works. I will tell you, I can sit at home late at night, working on behalf of my constituents in this assembly, and phone in to my computer in my constituency office and at Queen's Park here and take out any documents I want. It's as if you're there on the spot and it's not very difficult or expensive to do. This is what people are doing in all or most of the successful businesses in this province.

1550

Someone mentioned in one of our discussions that it might not look good in the House. I think it looks very good. It looks like we're doing more for less. It looks like we're being modern and being smart and getting the best value for the taxpayers' dollar.

In my letter there is reference to the Manitoba Legislature, that there are no standing orders but they're tolerated in the chamber. It hasn't become an issue, I guess, is the bottom line. In Newfoundland, only one member has used one and it is not an issue. In Saskatchewan, the policy is that portable computers are allowed in the chamber for committee of the whole or committee of finance.

My recommendation to the committee would be, and I'd be happy to put a motion forward at the appropriate time, that we allow the use of notebook computers in the House, as long as they do not disrupt the proceedings in any way.

Mr Frank Miclash (Kenora): The last time we adjourned to take this back to our caucuses, I did that and got an overwhelming "No way" from our caucus. As well, I read a letter here dated June 5, 1996, from your caucus chair which indicates, "However, when the government caucus took a vote on the subject, the majority of caucus members voted against allowing laptop computers in the chamber."

I have to go by what I have received from my caucus, and there was no abstention from that no; it was overwhelming. Everyone in the room indicated that they did not want it for various reasons. You've mentioned a couple of the reasons in terms of the decorum in the House, in terms of what it does to the speaker speaking right now with somebody sitting behind typing. We're supposed to be paying attention to what that actual speaker is saying, and I really think it takes away from the actual workings of the House.

I refer to both the government caucus chair's letter and from the response I got from my caucus indicating that they did not want laptops in the House at this time.

The Chair: Ms Freedman, I'd like you to address a point that was made by Mr O'Toole and Mr Young. The question was raised, why do the clerks have electronic devices at their table?

Clerk of the Committee (Ms Lisa Freedman): The reason there are intercoms at the clerks' table is that the clerks used to have their office in the main building, the clerks who were in charge of journals and the clerks in charge of committees, and at that point there wasn't any need for an intercom. When the clerks' offices got moved over to the Whitney Block, in order to produce the journals and to keep in touch with the offices, that was the reason the intercoms went in at that point, when they split the buildings off.

Mr Silipo: Let me just say before I get into giving you my views on this that while it's helpful to look at the issue of what staff, either in committee or in the Legislative Assembly, do on this, I believe strongly that there is a separation. Whatever we decide on this, it has been useful, in my experience, and would continue to be useful to ensure that the table officers in the House and staff here in committee continue to be able to use both laptop computers and have access to the telephone. It facilitates their serving us in doing our job better, and I hope we see the merit of that.

On the particular issue of whether we as members should be allowed to use laptop computers or notebook computers, and I appreciate the distinction, I don't speak

for anyone other than myself because our caucus hasn't discussed this issue. It's something I certainly am open to. I think it's something that should be looked at.

I agree with those who say it's modern evolution and perhaps the evolution of the future of the pen and paper. If we look at it with an open mind in terms of that approach, there may be a way to try to sort out the differences.

I appreciate and respect very much the views of those who believe it would distract from debate and from people paying attention. Any of us, whether we've been here a couple of years or just the last year, can think of lots of examples of disrespect and disruption in the Legislature. I'm not sure I'd see much of a difference between people using their computer or sitting there and reading or writing or answering correspondence or doing any number of other things. In terms of whether people pay attention to the person speaking in a debate, for example, I'm not sure having a laptop or notebook computer is going to make a big difference.

I think there are many changes that should be made to the way the Legislative Assembly works, or doesn't work, to make it more democratic and therefore more useful for, not just the members, but as a more representative body of the people of the province. I've talked a little about some of those, but those are bigger, broader issues.

We should be open to this idea. Given the clear division already in the very short discussion we've had, which I suspect is here and, from the correspondence we've had, is out there among the rest of our colleagues, if we were going to go in this direction we obviously should do it slowly and carefully.

The type of approach reflected in the Quebec situation, where it's clear there are certain times during the sittings of the Legislature where the notebook computers would not be allowed, such as during routine proceedings, for example, I suggest to those proposing this that it would probably be a wise direction to follow, initially at least and maybe even beyond just initially, if it were going to happen, limiting the use of laptop computers to the time when we are dealing with orders of the day or we're dealing in effect with debate. It seems to me that would be a useful way.

I expect that, just as in the other jurisdictions, there would not be that many people who would actually take advantage of this. I think there would also have to be some other understandings in terms of how this should function that would basically follow good taste and common sense; that if you're using a computer and you're sitting close to whomever is speaking, it would seem to be not a good idea to do it. Those kinds of things should be also part of it.

I guess that brings me to the last point I want to make. If we were going to go in this direction — as I say, I'd be quite supportive of it — how would we do it? We've got in front of us a couple of different ways in which it could be done. One is that there's actually a rule that says you can and the ways to do it. The other might be to simply leave it to the discretion of the Speaker to establish some guidelines. It might be wiser to start with the latter, but that's a point I suppose we also would need to

address if and when we get to the point of saying it's something that should be done.

Just to summarize, I'm saying it's an idea we should be open to. If it's approached carefully and slowly, it could be done in a way that would not detract from the decorum of the Legislature and would help those members who make use of computers to do their work and serve their constituents.

Mr O'Toole: I'd like to put into the record a memo. I thought each member should know my position, so I sent it just recently. Some may not have received it.

"As a member of the standing committee on the Legislative Assembly, I'm writing to you regarding the use of laptop computers in the chamber.

"As a backbencher with no frequent opportunity to speak in the Legislature, I believe a laptop computer could be effective use of my time. I would agree that during certain periods of the orders of the day it should not be permissible to use a device.

"If you want to examine technology and the computer, I suggest you look at the impact television has had on decorum in the chamber. The Ontario Legislature would not be the first to allow laptop computers. Since 1994, members of the House of Commons in Ottawa have used laptop computers, and since 1995 the privilege has been extended to the National Assembly in Quebec City.

"In the interests of the people of Ontario and the time we spend on their behalf, I encourage you to look to the future and allow members to use silent laptop computers in the chamber at certain times."

1600

That being said, that sort of overly simplifies. I think much of what Mr Silipo said is my position too. I'm prepared to move slowly into this and I'm prepared to live with all kinds of restrictions to allow the Speaker and other House leaders to see how far extending this is permitted.

Fully recognizing the importance of having timely, accurate information germane to debate, in that aspect it's very important, even more so on committees because we get so much paper it's almost mind-numbing. Much of what our caucus service is doing is on our access on our LAN and we can download it and organize it ourselves. I'm more comfortable doing that, as opposed to lugging mounds of paper around on some issues.

Our job is to communicate effectively. As a government backbencher, on those occasions where we get to speak and are allowed to participate in the debate, I like to have my own scripted lines accessible and done the way I like it. To me it's no different from what Mr Young said. It's a pen and pencil, nothing more, nothing less, and it's an accurate piece of information. That's what I'm dealing with.

I won't belabour the point. I am supportive, also fully recognizing that order and decorum are paramount to me and to members of our caucus. If this were to detract from that, the principle and the ethics involved in the dignity of the House, I would do my part to make sure that it was not visible, not audible and not interruptive in any way. I am sure we can accommodate it by introducing it with very restrictive usage.

For example, if you look at the routine proceedings and it gets down to the debate on a bill, at that particular

time I often sit there for two and three hours reading mounds of correspondence. My normal thing is to number the document and type what I want said in my response to those things and number it. I just file it as date number one, date number two, date number three, so I have my correspondence; they get the disc in my folder and they just peel out the letters. That's how it works. I know what I said; I've got it. It's not on some elusive piece of paper, it's on the disc, dated. All I've got to do is find the original correspondence. That's what I said.

In my prior life, working for General Motors, I was a systems manager and that's how we did our job, everything from scheduling — and I don't particularly like my staff having to read my writing. It's such a useful tool for those who want to use it. Those who don't, that's fine. But please give us the opportunity to work more effectively for the people of Ontario. That's the bottom line.

Mr John Gerretsen (Kingston and The Islands): I take a slightly different approach to this and I'd like to pick up on something Mr Preston said earlier. It's been my observation in the last year or so that the way the House operates probably by and large is the way it operated 100 years ago, as well, or maybe 70 or 80 years ago, in that really our systems haven't changed. Maybe the rules have been codified a little bit better, but the basic way in which governments introduce legislation, what happens on second reading etc, the sort of speeches that follow that and the public hearings that happen after that etc really haven't changed in all that many years.

It tells me something, and I'm not sure what percentage of the general public would know that at any time after question period you're lucky if you see 30 members in the House all told. We have committee meetings right at this moment when the House is sitting, as well. If the debates that are going on in the House are that important, why aren't we there listening to them? The reason we're not there listening to them is that in most cases — and I say in most cases because I'd like to keep an open mind that there may be the odd situation where this is not the case — the whole thing is predetermined, both the government position and by and large the opposition position as well. Let's be honest with one another. The main reason the speeches are taking place are for television purposes and for nothing else. It's not going to change anybody's mind in the House at all. Basically, what I'm saying is that I think problems go much deeper than just whether you allow a computer into the House. You've got to take a look at the whole structure.

One of the notions I've been toying with in my mind, which at least is a start, is why doesn't a government send out a bill for public consultation after first reading? I guess traditionally it's always been done after second reading, when all parties, after debate, have already staked out their position. It's a bit of a sham on the general public, quite frankly, to expect them to then come in and put positions forward when, I dare say, most of the people in the three committees that I've sat on know that basically everything is already predetermined, and if there's enough of a furore, maybe some minor amendments will be allowed to go through etc.

None of us should be doing any other work in the House, whether it's reading our mail, whether it's signing letters, whether it's reading the newspapers, whether it's

using our computers etc. If the debate is really meaningful, we presumably should be there to take part in it. I personally have some great difficulty with these 30-minute rules that we have, that everybody feels they have to use up the entire 30 minutes. I guess it used to be a lot worse before those rules were there. I think what would be much more meaningful would be a series of 10-minute debates etc, but allow a person to get up more than once, for example.

These are just, I know, all sorts of weird ideas that obviously we're not going to resolve here, but you have to throw all that into the pot to make the whole process more meaningful for ourselves and for the people out there. Just by dealing with the one issue of using a laptop computer in the Legislature, quite frankly what that really is aiding and abetting is the notion that whatever goes on down there in debate really doesn't mean anything.

What is it next? Is the next thing silent telephones? If the clerks can work with telephones that don't ring, why don't we have a telephone on our desk so we can make our calls from there? I'm sure some of you would think that some of these ideas are ridiculous, but it's just a progression of what's next and what's next. In the meantime, whatever goes on in the House, the whole debating notion, is totally gone.

I don't support a piecemeal approach and I'm sure members in the opposition have thought of these things before and have brought these matters up before. When you're in opposition you get all these brilliant ideas and once you're in government and you know you can pretty well get your way any time you want, then a lot of these ideas of modernizing our system sort of fall by the wayside, and I suppose all parties in the past have been guilty of that.

I'm having a little difficulty with what the next step is, and maybe I'll ask you that, Mr Chair. We have a letter from your caucus chair to the effect that your caucus members voted against it. You've heard from Mr Micalash that our caucus voted against it. Is this a question that regardless of the different caucuses, which are a solid majority between the two caucuses, we can bring another recommendation forward to the Speaker, regardless, and he can totally ignore the caucus votes?

The Chair: I would say that's up to the Speaker to determine, but clearly he's asked for the advice of this committee and I'm sure he would take a motion of this committee duly passed very seriously. But he is aware of the fact that the government caucus — he was the one who received Mrs Marland's letter, so he's certainly well aware of the government caucus's decision.

Mr Gerretsen: My position is that although I certainly have some personal sympathy for the notion of bringing something in that can be an aid etc, I think what it's really doing is just fostering a piecemeal approach to the whole situation. If we were really serious about creating a better image for ourselves and for the general public out there, and for the decorum, then let's all be given some sort of a meaningful role in the process, which isn't there right now as far as I'm concerned.

1610

The Chair: I just want to inform members I'm recognizing members in order of their indicating an

interest. I'm not going in rotation. I hope that's satisfactory. If it isn't, let me know.

Mr Preston: I'm in the unenviable position of agreeing with John again. I think the request to introduce them is a symptom of the sickness that we have in the assembly, and we do have a sickness in the assembly. It's sleeping sickness. There's —

Interjections.

Mr Preston: Before I got involved with this lash-up, I used to watch every once in a while a parliamentary channel, whether it was Ontario or Ottawa, and I would say, "My God, that guy's reading a newspaper right in the Legislature." I have found out since that's to protect his sanity and that's the thing to do. You either read a newspaper or listen to the same speech four times over as it goes along the benches.

Mr Gerretsen talks about changing it to 10-minute debates. There is no such thing as debate. In debate, the Speaker says, "I've heard that point. Do you have something new to add?" and goes on to the next person. In the Legislature, it goes down the line. Everybody gets up to speak their own piece and it's the same damned piece. So this is a symptom of the sickness. They're trying to find something to do in there rather than have to sit there and listen to babble, and I'm talking about babble from both —

Interjections.

Mr Preston: I'm not pointing at the opposition. I'm talking about babble from everybody. We stand up and we ask marshmallow questions that everybody looks and says, "What are you asking that for?" I've stood up twice in the assembly. I had something to say. That's the only time I stand up. This is —

Mr Gerretsen: They were very memorable words. I remember.

Interjection: How about on committee?

Mr Preston: On committee, once in a while, when I've got something to say, I say it. This is a symptom. I have maybe a solution that may help everybody. Do we actually have a rule that says they're not allowed?

The Chair: At the present time, yes.

Mr Young: There is a ruling.

The Chair: The Speaker's past ruling is the ruling on the record in this case.

Mr Preston: How about asking for the Speaker to suspend that ruling for the first three months of the next sitting with some guidelines from this committee as to how to use them? He's not going to say they're allowed or not allowed, just that the ruling is suspended, and we see what happens under some guidelines that we lay down, which means if the camera comes within two seats of you, you shut it down and sit there very attentively, no sound, and nobody sitting in the front row plays games so the people in the gallery can see that you're playing them.

Mr Dave Boushy (Sarnia): I came here with an open mind, and actually I'm flexible on the issue, but to think about it, I'm not too sure that I'm ready to vote in favour of that.

I have a son who is 25 years old and he's a laptop nut. He's got tons of other work, but he seems to sit at that machine and do everything. He sends faxes, he does his

correspondence. Is this a trend we are going to in the House? Are we going to read our speeches? Are we using this for a variety of reasons? I could see the odd person using it quietly in the corner, but eventually, to have each one doing that, I'm not ready to vote for it at this time. I don't think it's fair for the assembly.

Mr Jean-Marc Lalonde (Prescott and Russell): With due respect to Mr Young and Mr O'Toole, as indicated in Mr Sibenik's report, the con arguments in the third paragraph, "Members who are in the chamber have a responsibility to listen or be focused on what is being said by the member who has the floor; it shows respect for the member..."

Many times I've heard of people watching their television — and I think you brought this up a little while ago — people reading their newspaper. The people are saying: "What are you doing in the House? People are reading the paper."

If we start letting the people use the telephone, it is the beginning of uncontrollable gadgets. We have the salon just next door; we could go ahead and do phone calls from there. But at the present time, you could walk to offices many times, and the people are supposed to be working; they're playing games on their computer. It only means once that the television camera will catch a member playing a game on this computer. I'm sorry. I could in a way support your position due to the fact that you might be very busy after hours or you like to follow up the debate in the chamber, but I think the place to do that type of work is outside the chamber.

Mr Bill Grimmett (Muskoka-Georgian Bay): I have to say at the outset that I don't think I'd support the idea of bringing the machines into the chamber. I think Mr Gerretsen's comments today have been the most salient in terms of identifying the real issue, and that is, the chamber is not being used for the purpose it's there for. Some of the issues like whether the debate is actually debate, whether the speakers have to speak for 30 minutes or 90 minutes, I think are very significant ones that we as a committee should probably be exploring.

I would be delighted to be part of a group that would look at some of these commonsense issues that are very obvious to some of us to try and remedy them. I certainly think there is a real danger in approaching this in a piecemeal fashion and avoiding the real issue, which I think focuses on what our purpose is as members and what the debate really should be about.

Mr E.J. Douglas Rollins (Quinte): I was quite interested in John's comments too. I also have some feeling towards Peter's comment that out of trial and error may be a decision. However, I'm a firm believer that a majority of the wishes of the people, whatever that group is, should be adhered to. We in our caucus said no, we weren't supporting it. The Liberals supported in their caucus that no, it wasn't. I think that's what we're here for. We're elected on a majority. If you can't win one time, there's always another way of playing the game. Is that the way you play the game? You bring it through another way?

I'm going to oppose it. I don't really believe we are anywhere near a front-page calibre of television with the decorum we keep in the House, and I think this would be

just one more piece of instrument that maybe takes away. I was on the committee when Mr Young used it. I'll agree it was not distracting. However, as some of the opposition members said, if it was just seen once playing a game on television it would do more harm than it would ever do good. And for that reason at this time, I'm going to support my party the way they voted in caucus in saying no.

Mr Young: Mr Preston mentioned the term "sickness" with regard to activities in the House, which I feel is a strong term. Mr Gerretsen talked about decorum, and Mr Rollins, and I totally support the idea. I'd like to see more decorum in the House. As a new member — I've been here just over a year now — I sometimes sit and wonder how somebody can sit and blather on for an entire hour when they know that hardly anyone, if anyone, is listening on a topic. It is inefficient, and it doesn't necessarily often bring the House forward. It doesn't serve the people well.

I'd be happy to be part of any discussion that provides for more effective debate, higher-quality debate. When someone has something to say, if they want to say it in 10 minutes and sit down, great, we can move the agenda forward or we can serve the people better. But I've seen tremendous inefficiencies, and it has nothing to do with whether you bring books into the House or whether you wanted to bring a notebook computer in.

1620

As I mentioned earlier, in Westminster they don't even have desks. If the members of this committee want to recommend to the Speaker that we remove desks and we sit, and when somebody speaks they speak off the top of their head and if they're knowledgeable they might speak for a longer time; if they're not knowledgeable, they say their piece and sit down in a short while, I would advocate that too, to make for a more dynamic form of government. I'd be happy to do that.

But in the meanwhile, the argument just doesn't hold water that you're doing anything much different with a book than with a notebook computer. I want to repeat, it has absolutely nothing to do with a telephone, which is a total distraction. Something might ring and you're talking and you're totally distracted.

It's true that our caucus voted against the use of notebook computers, but I will tell you, without telling you what went on in caucus, it was far from unanimous.

Mr Gerretsen: Tell us; come on.

Mr Young: It was far from unanimous, I'll tell you that. What happened was, with no warning, it was raised. The members had no time to research the issue or discuss the issue or to investigate the issue. It was brought upon us rather quickly and we were told we have to make a quick decision. Not all the members of our caucus were present and so, as a result, that vote was far from unanimous.

There's another argument here. In the research officer's notes it says in the "con" arguments against notebook computers that it would have "a deleterious effect on order and decorum — eg, there would be more interjections." I can't, for the life of me, think how having a notebook computer in the House would create more interjections than having notes. I just don't see how that follows at all.

As some of the members know, I worked in a high-tech industry for the last 14 years, and we became aware that there is a reluctance among individuals to use new technology; we've all experienced it. I'm sure there are people here who have a VCR at home with the light still flashing with 12 o'clock on it, because they never learned how to program it. We found that with over 80% of the people who own a VCR —

Mr Rollins: He's been to your house, John.

Mr Young: — the light's still flashing at 12 o'clock. It's the same with microwave ovens. You learn how to heat up coffee or heat up something, and then as time goes on you learn how to use it better. When you look at the dashboard of a brand-new car, you've got to really sit and figure it out, but you have to do it.

There are two kinds of people that I've discovered; those who use a computer regularly and understand how it can help them do their job better, and those who haven't yet got up to speed on it. Those who use it regularly normally find it to be an invaluable tool and, as I've stated before, I found it to be so.

I personally believe it's inevitable that they will be allowed into the chamber, and whether it happens now or later, it's a matter of convenience to me to let me do my job better. I would never suggest — never — that anybody be allowed to play computer games in the House or any such thing or to detract from the decorum of the House, but to help you do your job better, discreetly, I think it's a progressive thing and I think the committee should support it.

Mr O'Toole: I appreciate the discussion and I think the points have all been made. I want to be on the record. First, with regard to Mr Rollins's comment on the discussion in caucus, in my view, I think Terence has outlined that we really didn't give it any research or reasoned thought. That's why I have a problem with making that as a substantive claim that it had been well discussed. That isn't what happened at all; it wasn't even on the agenda.

I think, Mr Gerretsen, you have made the best, unquestionably the most fundamental — which underlines every reason I want to use another tool there. It's completely and absolutely, as you've suggested, meaningless and unproductive use of my time for my constituents. I spend about three to four hours every day driving back and forth to my riding. I live in Durham East — no, actually north. It's almost 100 kilometres, and I drive every day, morning and night, and I'm here every morning at 8 o'clock. I spend almost every day in the House subbing for people, because I'm not a committee chair, I'm not a PA. I'm a very remote backbencher, and I'm not called on to participate in much of the — for some reason. I'm not sure why.

Mr Gerretsen: I'll write you a letter of recommendation.

Mr O'Toole: You've said it most succinctly, and my plea is this, not to try and discredit myself. My time will come to make a contribution, and I want to be effective and prepared to be that.

But the best point I like is that — it cries out in what I'm saying, for the very reasons you stated more succinctly. When I've listened to somebody for 90 minutes

ramble on — Mr Preston uses “babble on”; that’s exactly what it is. And that may be us, but there are more of us, so we have to share it, so we don’t get any time. Over there, there might be one person, no one else wants to do the duty, and they do the whole 90 minutes. It’s absolutely frightening. In fact, it’s mind-numbing — although I want to hear the essence of the arguments for those people in Ontario who do not hold to every one of our principles.

I’m clear that I want to hear those discussions, but when I’ve heard it once, I’ve pretty well got the trend line, and then I have to hear it for perhaps two days. In those periods of time, the Speaker, if I was in any way disrupting proceedings, I believe he should be able to — not warn me — out of the House. If that was a game or a beep on the machine, I think that would be one more rule that he could say, “I’m sorry, you’re out of the chamber.” But I would relent in my quest and I would say that I would be hopeful that this committee would examine the standing orders on real debate. I think your point is well made, Mr Gerretsen, for the third time.

Finally, I think what was suggested by Mr Preston is the best compromise. Mr Young may not agree with this, but I’d be resigned to testing it on a trial basis even in committee. Travelling in committee this summer might be the perfect experiment, and the reason is because you go from place to place and you’ve got all this paper and all the presentations and you have no way of accessing who said what, when, where.

On the computer, I would just put, “Gerretsen, June 13, issue: Bill 55,” whatever, and I could find it, because I’d file it that way and I could find it or get the clerk to get it for me. So for those reasons, I would like to suggest my compromise would be allowing it to be used in committees for a period of time where we could see the advantages and disadvantages to the future use of those in the chamber. Those are the points. I thank you for allowing me to speak the second time.

The Chair: Thank you very much. Mr DeFaria, for the first time.

Mr Carl DeFaria (Mississauga East): I’ll be brief in stating my position. I support the position of Mr Young and I also would indicate that I support the position put forward by Mr Grimmett with respect to amending the standing orders as far as the debates are concerned.

We all agree that decorum is paramount in the House, but often decorum is jeopardized by boredom. If members could use some of their time productively while other members spend 90 minutes talking about something their assistants wrote and that really doesn’t deal with the issue at hand, I think most people would be behaving much better. I notice often the members on all sides who interjected were members who had nothing to do. They were bored listening to a lot of rubbish and they felt they had to say something, and that’s how the decorum in the House was lost.

I also feel that by dealing with the standing orders, we’ll be able to address the issue of debate, whether we have to have a quorum when there is debate. We have already electronic cable TV which probably encouraged all that time-wasting debate that takes place. But if we as a committee could deal with it — it would have to be separate from this issue, the issue of debate and standing

orders. I think they shouldn’t go together because that would take probably longer to deal with than the issue of notepads.

The item that some members mentioned, that the TV may catch somebody playing a video game in the House — that’s fine. If they are playing a video game and they get caught, they should be exposed. They shouldn’t be playing a video game in the House.

I would submit that maybe it is a compromise, as Mr Preston indicated, to ask the Speaker to suspend the ruling for a period of time, for example next session, and see how it works, and provide some directions on when a member can use the notepad and when it can’t be used. Unless we start changing things — for some younger members here computers are, as it has been said, like pen and paper. A lot of us came here to do some work and we have to spend time from 1:30 to 6 o’clock not getting anything accomplished. We have to be there because there has to be a quorum, but nothing is being done, and that’s just not fair for people who find they need their computer to work.

1630

The Chair: I have three more people who would like to participate. Everyone except the Chair, I guess, has offered an opinion so far; these three people have already had an opportunity to speak, but I will entertain their further points.

Mr Michash: Can I suggest that we call the question? I think we’ve all had our time to debate.

The Chair: There is no question before the floor yet. Mr Preston, briefly, do you have concluding comments?

Mr Preston: I don’t disagree with Mr Young or Mr O’Toole on the value. I use one myself. We have horse shows. I can put in everything I can see out there, the good points of a stallion or of a mare, and end up with it at home. And you use them in business, but do you take them to a directors’ meeting? No, you don’t, because you’re there to listen. You use them when you get back to the office.

I would suggest a trial period with some rules thrown in, and that satisfies everybody.

Mr Young: I want to comment with regard to relevance. If we allow notebook computers to be used in committee, that’s a help, but it’s only halfway. I’ll tell you why, through my experience. It was no problem on Bill 26 on the road; there was no problem. I have two files in here — Mr Gerretsen will know — one file that says “Bill 26 amendments” and the other file which is “Bill 26 basic.” We needed two files, and I tracked the bill, and when I came back to the assembly I couldn’t open either one of those files. It’s almost as if it’s an all-or-nothing proposition, because once you put in all your documents, once you rely on this machine to store your thoughts and your information, you need to get access to it; you need to be able to pull it out and look something up. If somebody takes it away from you, it’s like taking away your notebook or your day planner or whatever. It’s a good idea to have it in committee, and I appreciate it and it will help, but it’s not what we need. What we need is to be able to access it in the House.

Mr Michash: I move that in accordance to the wishes of the majority of members within the caucuses, we vote against the use of laptop computers in the chamber.

The Chair: Is there any debate on the motion?

Mr O'Toole: I think that runs contrary to much of the balance of the discussion this afternoon. I think it's very simplistic, with all respect, Mr Miclash, to just refuse it. I would not be supporting that and in that respect I'd be trying to defeat that one. I look towards the original recommendation, which I'm surprised wasn't recognized by the Chair. Mr Preston, I thought, tried to formulate a recommendation.

The Chair: Yes, and he did not indicate it as a formal motion.

Mr Preston: There's already a motion on the floor, is there not?

The Chair: There is indeed, and we're debating the motion.

Mr O'Toole: I think the only proper thing to do would be to defeat this one and perhaps return to some compromise pilot activity. I think Mr Gerretsen's arguments are in there somewhere too, a review of some of the standing orders on debate.

The Chair: Any further discussion on Mr Miclash's —

Mr Silipo: On a point of order, Mr Chair: Did we not have another motion on the floor from Mr Young or someone?

Mr O'Toole: I thought we did too.

The Chair: I didn't recognize it as such. I assumed it was suggestions leading to a motion. I don't think he used the words "I move such-and-such." I didn't hear it if it was.

Mr Preston: Well, we can't move it while there's a motion on the floor anyway.

Mr Young: On the same point of order, Mr Chair, I said I would be happy to make a motion at the appropriate time.

The Chair: Yes, I heard you say that. I heard Peter make some suggestions too, but he didn't couch it in the phraseology of a motion, officially. Any further comments?

Mr Grimmett: Could you read back the motion, Mr Chair?

The Chair: What we have here, assuming it's satisfactory to Mr Miclash is, "Mr Miclash has moved that we vote against the use of laptop computers in the chamber." Is that an accurate characterization? Any further discussion?

We now move to the vote. All in favour of Mr Miclash's motion? All opposed? Mr Miclash's motion is carried. That concludes —

Mr Boushy: Can I ask a question? We're just about to adjourn for the summer. Are there any plans to discuss decorum and the regulations in the House prior to or during the summer recess?

The Chair: According to the subcommittee, and I believe there's a motion from this committee which accepted that, until the House leaders get back to this committee with advice, we would leave that issue in abeyance. We also requested that the House leaders get back to us before the end of the spring session.

Mr O'Toole, did you have something to add?

Mr O'Toole: Yes. With all respect, I move that the comments made by Mr Gerretsen are of extreme importance to the function of this Legislative Assembly commit-

tee. In respect of that, I move that this issue of the standing orders dealing with debate and decorum in the House be placed on the agenda for the next meeting of this committee.

The Chair: Can you repeat that, Mr O'Toole?

Mr O'Toole: Yes. The motion is, with respect to the comments made by Mr Gerretsen with respect to the standing orders on debate and the meaning and purpose of debate in the House, that this committee at its next sitting deal with the standing orders and decorum in the House.

Mr Preston: Would you like to retract what you just said?

Mr Gerretsen: No.

Mr O'Toole: I mean that respectfully and in a non-partisan way, I really do, if we could just get into it.

The Chair: Thank you for that motion, Mr O'Toole. I would like to invite debate on the motion.

Mr Gerretsen: First of all, I don't think I used the word "decorum" once in my speech or in my little suggestion. My suggestion simply was that it went much further than the use of laptop computers, that you've got to take a look at the whole way in which legislation proceeds through the House and all the various debates that go with it. If you want to take a look at the whole thing — I stand by what I said earlier; I don't back away from that — don't just pick one little aspect of it and say, "That's what he's talking about." Maybe we should read Hansard first and see what I said in its totality before you deal with any of this.

The Chair: Thank you, Mr Gerretsen.

Mr Silipo: I hope we're not going to spend all day debating this motion. I'm going to try to be very brief. I say sincerely, with all due respect to Mr O'Toole, that the last time we went around this circle in terms of trying to deal by just putting motions on the agenda requesting discussion about rule changes we saw where that got us as a committee. Let's not do this again.

We spent a good amount of time discussing, on another issue, the question of not wasting time. Please, let's not waste each other's time dealing with this issue in this way. We all agree that changes should be made to the way the House functions. This is not the way to deal with it.

The Chair: Mr O'Toole, it has been the routine of this committee particularly to have the subcommittee deal with matters and make recommendations to the full committee before things like this are dealt with. Would you be interested in referring this matter to the subcommittee before you elect to take it further?

Mr O'Toole: No. I'm not trying to be belligerent, and it's meant as a productive continuum in the points that have been made by Mr Morin, Mr Gerretsen and Mr Silipo. Other members of this committee have requested that we follow through on looking at the standing orders to make time in the House more productive. It's in that context that I believe there is a strong, legitimate will in this committee to actually deal with many points you made.

I'll quote what you said, Mr Gerretsen: "To make the process more meaningful, what is the next step? We

cannot deal with this in an isolated example." We are engaged in trying in this committee to improve the procedures and decorum in the House, and I think in a completely non-partisan way, for the betterment and functioning of that committee.

Without trying to be belligerent, in the interest of being non-partisan I will withdraw the motion in respect of where it goes. At the last meeting we had a motion which is in the books, and I have a copy of the minutes, where I said that within a certain time period the House leaders shall deal with this. I see Mr Bradley here, and from my experience of listening to him in the House I know him to be a sound and thoughtful parliamentarian. I want to stress that I have the same respect for Mr

Cooke's experience and advice to this committee. I think they can guide us to make the debate process more meaningful on the very basis, Mr Gerretsen, of the points you made. I do not want to disappoint members here by pushing this issue any further. If I'm to appreciate that there is this priority to have it before the subcommittee, I'm content with that, and with that understanding I will withdraw my motion.

The Chair: Thank you very much, Mr O'Toole. The committee will sit again at the discretion of the Chair. I would like to indicate interest to the subcommittee members that we will meet at an appropriate time to discuss this issue. The meeting's adjourned.

The committee adjourned at 1642.

CONTENTS

Wednesday 12 June 1996

Use of computers in House M-175

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Arnott, Ted (Wellington PC)

Vice-Chair / Vice-Président: Hastings, John (Etobicoke-Rexdale PC)

*Arnott, Ted (Wellington PC)

Bartolucci, Rick (Sudbury L)

*Boushy, Dave (Sarnia PC)

Cooke, David S. (Windsor-Riverside ND)

*DeFaria, Carl (Mississauga East / -Est PC)

Froese, Tom (St Catharines-Brock PC)

*Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

Hastings, John (Etobicoke-Rexdale PC)

Johnson, Ron (Brantford PC)

*Miclash, Frank (Kenora L)

Morin, Gilles E. (Carleton East / -Est L)

*O'Toole, John R. (Durham East / -Est PC)

*Silipo, Tony (Dovercourt ND)

Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Gerretsen, John (Kingston and The Islands / Kingston et Les Îles L) for Mr Bartolucci

Lalonde, Jean-Marc (Prescott and Russell / Prescott et Russell L) for Mr Morin

Preston, Peter L. (Brant-Haldimand PC) for Mr Hastings

Rollins, E. J. Douglas (Quinte PC) for Mr Froese

Young, Terence H. (Halton Centre / -Centre PC) for Mr Johnson

Clerk / Greffière: Lisa Freedman

Staff / Personnel: Peter Sibenik, procedural research clerk, Office of the Clerk

A200-1
K20
L20



M-18

M-18

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 9 September 1996

Journal des débats (Hansard)

Lundi 9 septembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Monday 9 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Lundi 9 septembre 1996

*The committee met at 1005 in room 151.*REFERENDA
SUBCOMMITTEE REPORT

The Chair (Mr Ted Arnott): Good morning. I'm calling this meeting of the standing committee on the Legislative Assembly to order. We are sitting for the next four days to look at the issue of referendums. This committee has been referred a paper by the government to determine what role, if any, the government can play to encourage the establishment of referendums to better serve the public interest and know the public opinion on various issues.

I have a couple of things I'd like to inform the committee of before we get started. When these four days of committee hearings are completed, we intend to work, as a committee, towards making a report which we will table with the House.

Some of the witnesses who will be making presentations to this committee over the next four days will not be physically with us in the room but will be giving us their testimony through videoconferencing and teleconferencing. For the videoconference, unfortunately, we don't have the facilities in this room to do that sort of thing and we'll have to move. We haven't got confirmation of exactly which committee room we'll be using for that as of yet, but certainly we'll let you know as soon as that is confirmed.

There is a letter with all committee members from the clerk of the justice committee which makes reference to their suggestion that this committee, in part of its broader responsibilities, look at how teleconferencing can be incorporated into all the committee processes. That's something we'll certainly be able to do better now that we're going to be participating directly with that method of communication.

We have a subcommittee report that has not yet been accepted by the full committee. I wonder if anyone would like to move the acceptance of the subcommittee report.

Mr Tony Clement (Brampton South): I'll move that.

The Chair: Any discussion?

Mr Bud Wildman (Algoma): Yes, I have some discussion. I'm just new on the committee, so I'm sorry if I was not able to have input into the subcommittee report previously.

I would suggest for the benefit of all members of the Legislature and certainly all members of the committee that very early in our deliberations we have a research paper presented which explains exactly what the legislation is in each jurisdiction in Canada. In the discussion paper, it makes reference to the fact that Ontario is one

of two provinces that does not have legislation. I very much doubt that all of the legislation in all of the provinces that have legislation is the same. I would like to know the exact regulations, that is, on what kinds of issues referenda can be initiated in other provinces, what are the criteria for approving such an initiation and what are the logistics and the regulations around referenda in each jurisdiction?

The discussion paper certainly doesn't make that clear but does make reference to the fact that Ontarians are somehow being denied democratic rights by the fact that they are only one of two jurisdictions in this country that don't have referendum legislation. Let's find out what the others are before we make such nominative statements.

Mr Gerry Phillips (Scarborough-Agincourt): I'd just like to express my concern that there's not an opportunity, at least as it appears on this first day of hearings, for the government to explain what its intent is in this paper. I think it's customary that the government be the first witness. They say, "Here is what we intend in this paper, here is the intent of the paper," and all of the committee members have a chance to understand what's behind it.

For example, in the paper, one of the key reasons this is coming forward is that there are "well-financed and politically able" special-interest groups that have been able "to have their narrow interests translated into public policy." I'd like a chance for the government to let us know who those narrow groups are —

Mr Wildman: I was wondering if that was an attack on David Somerville.

Mr Phillips: — what policy was put in by those narrow interest groups and what's driving it.

Secondly, I know that when he was in opposition, the Premier signed a pledge that any increase in the existing tax rate or a new tax rate would be subject to approval by the voters of Ontario in a binding referendum. Is that what the government's intent is? If you are saying, "Listen, it is a given that this legislation will end up with a binding referendum on new taxes," then tell us that. Don't put us through an exercise where we go through theoretically getting public input only to find that your minds are already made up and you are going to implement that.

I'm saying that I would have hoped the government, whoever is sponsoring this piece of legislation, would have been our first witness and we would have had a chance to discuss the intent, where the government wants to go with this draft paper. I guess, Mr Chair, in the absence of that happening this morning, I'm going to look for your direction on when the government will schedule itself to explain this paper.

I gather this is a paper sponsored by the Premier. This is the Premier's paper.

The Chair: It was referred to us by the Ministry of the Attorney General, I believe.

Mr Phillips: Then it's not the Premier's; it's the Attorney General's bill? Then I would move that we request the Attorney General to appear before the committee to give us an opportunity to have an explanation of the intent of the paper and for us to have a chance to discuss it with him.

Mr Tony Silipo (Dovercourt): I will be happy to support that motion. I was going to move something similar, in fact.

As you may know, when we had the first discussion around how to deal with this, it was actually done through a series of phone calls, given that it was difficult to get everyone together. The way in which this paper was initially presented was that it was very much a non-partisan, non-political paper and therefore didn't really have a direction set out by the government, in which case one might understand the need for us to proceed without having anyone from the government here.

Following that, I found it rather interesting, first of all, to see the way in which the paper was released. Secondly, upon looking at the content of it, it becomes very clear that this is a very partisan paper. I don't know how many times the Premier of the province is quoted in there. That in and of itself isn't an issue, except that it does create very much a particular slant as to why this is even here before us. When that happens, it's incumbent upon the government to have the decency to bring before this committee, if not the Premier, at least a minister or even a parliamentary assistant if they don't want to bring a minister, who is going to be able to start off the proceedings by saying, "This is what the paper is about; this is why we're doing it; this is what our intent is."

I think we've all been through this kind of routine enough times to know that this government certainly does not come at any major issue without a very clear intent behind it. If their intent is to proceed to put together legislation to support, for example, issues around the raising of taxes, then they ought to tell us that. They ought to tell us that up front, and then the people of the province and the opposition parties can deal with that issue. We can respond to that. If it's indeed an open-ended question, then they ought to have the decency to say that as well, but not to camouflage it with a whole series of quotes and paraquotes and paraphrases from the Premier which clearly indicate that there is here, at least to a large extent it seems to me, a mind that's already made up. But they won't tell us exactly what they're intending to do.

There is a great irony involved in all of this in that one of the pretences we see set out in this paper is that this is the way it's going to open up democracy to the people of the province. As my colleague Mr Wildman said, the paper makes a lot of the fact that Ontario is one of two jurisdictions that does not have a referendum law. Leaving aside the fact that that in and of itself does not preclude there being referenda held, it's rather interesting that this same government that, through Bill 26 in particular, took away many of people's basic rights in

this province now seems to be suggesting that the time has come for it to give back democracy to the people of the province.

I'm sorry, Mr Chair, it's a little hard for us to swallow. It's a little difficult for us to take, given the activities and given the track record of this government over the last year. I just think it's a bit of a shame that the government doesn't even have the decency to start these proceedings by having a minister responsible, if not the Premier, come before us and tell us exactly what they intend to do with this issue.

The Chair: Thank you very much, Mr Silipo. Mr Clement?

Mr Clement: Are we speaking to the motion then, Mr Chair?

The Chair: I had requested a motion to accept the subcommittee report.

Mr Clement: And that's the motion that's on the floor?

The Chair: No one has moved that motion yet.

Mr Wildman: But clearly Mr Phillips moved a motion.

The Chair: I didn't hear him move a motion. Did you indicate specifically —

Mr Phillips: Yes, I did, that the committee request the Attorney General to appear before the committee.

The Chair: So we accept that as an amendment to the subcommittee report?

Mr Phillips: I do.

Mr Wildman: Chair?

The Chair: No. I have recognized Mr Clement.

Mr Clement: I think I have the floor at this point. Thank you, though. I thank the honourable members for their suggestions. Let me deal with the primary issue that was raised by Mr Wildman first with respect to research, which would be a good idea. I would perhaps ask Mr Wildman, though, to wait until we have heard from some of our guests this morning and this afternoon in particular where a number of those issues probably will be canvassed by those deputants. But I'm not posing any opposition to further research should that be deemed to be necessary by two or fewer members of this committee.

With respect to the status of the discussion paper, I believe it was Mr Silipo and Mr Phillips who asked the question where the government was headed on this. I believe that question is answered in the first paragraph of the document, which says, "The Ontario government is firmly committed to using the referendum as a tool of increased accountability and improved public participation in the decision-making process."

You will find that, gentlemen, on page 2 of the discussion paper. I think it would be safe to say, to answer this question immediately, that there will be legislation on this particular issue at some point in the future, once we have had an opportunity through this process to get the views of Ontarians and some other experts in the field on the table to see how best to accomplish this.

Are there pitfalls that we should know about? What should be the thresholds? What should be the manner of deciding the question? How many people have to turn up before it's a valid referendum? All these issues, I think,

we as parliamentarians have a duty to consider by listening to experts and others knowledgeable in the field or others who just simply have opinions on these particular issues.

I believe, though, it is too early to demand that the Attorney General speak on behalf of what is a non-existent bill. There is no bill before this committee at this point. There is simply a discussion paper and I, for one, would like to use the maximum amount of time available to this committee to hear from deputations, from citizenry and others from outside the province who have expertise in the field, rather than to engage in the debate over what is non-existent legislation at this particular time.

When we come back, as the Attorney General or the government of Ontario, with legislation, I think there will be ample opportunity to discuss as parliamentarians with the Attorney General or other sponsor of the bill the contents of the bill and the government rationale. But right now we want to hear from other people and I would propose that the sooner we do that, the better.

The Chair: Is there any further discussion on Mr Phillips's amendment?

Mr Phillips: That comment is fully unacceptable to us. The paper outlines the premise on which you're bringing this forward, and you make a number of statements in it that I think the committee should have an explanation of how they were arrived at. You say in here, "Well-financed and politically able, many of these groups have been able to have their narrow interests translated into public policy." That's what's driving you. I'd like to know who those people are and how you reached that conclusion.

This paper demands a government explanation of what you mean by it, and that should be the starting point. I think the public is owed that. The public is owed an explanation from the government of how you arrived at this conclusion, the background of it, and then we can get into a discussion with our expert witnesses. But surely you owe that much to the public.

There's no bill, but you say the bill will be drafted on the basis of this discussion paper. So let's have a discussion of the discussion paper. If you don't believe you owe that to the public, then we're in more trouble than this paper suggests.

Mr Wildman: I appreciate Mr Clement's comments and the fact that he's made it clear, which I think was pretty clear anyway from the paper, that the Premier is determined to move forward with legislation.

1020

But I support Mr Phillips's comments. There are a number of statements made in this discussion paper that beg a number of questions. He has referred to one, the statement that well-financed interest groups have been able to get their narrow interests translated into public policy. I think that begs a question: Give us some examples of the interest groups, of their narrow interests and what areas of public policy are implementing those narrow interests.

What this paper is basically saying is that the Legislature of Ontario, this government and previous governments, have initiated policy on the basis of lobbying, policies which serve the narrow interests of certain

groups. That's quite a statement in a democracy. In a way, it even questions the democracy in this province. To just make a bald statement like that without any explanation is unacceptable in this Legislature. We must have a discussion of this paper and the rationale that led to making such statements in it.

Also, I think we do need the research laid out, at least in sort of a résumé, of the legislation in other provinces because of the statement in the paper that Ontarians are being denied their democratic rights that residents of other jurisdictions have because we don't have this kind of legislation, recognizing, as Mr Silipo said, that there's no legislation that prohibits the calling of referenda in this province.

I want to hear from the public, from any interested parties, and I would not suggest that any of them have narrow interests. I'm sure they're all here for the public good and I want to hear from them, but I want to be able to question them and their comments on the basis of some facts, not on the basis of conjecture put out in the draft paper with no examples and no proper justification for some rather unusual, to say the least, statements.

I hope the members of the committee, in the interest of having a full and serious discussion of this very important issue and proposal, would want to get some information upon which they can base their questioning of the witnesses before we begin. In order to do that we need a government representative to explain the intent, to explain the statements in the discussion paper and we need the research to explain what the situation is in other jurisdictions.

Mr Rick Bartolucci (Sudbury): I guess Mr Clement's comments beg a couple of questions that I would like answers to. Whose document is this? Is this a government document, is this a Premier's document or is this an Attorney General's document? Who is responsible for this document? The second question would be, why isn't that person here, which is customary, to introduce the document?

Thirdly, are the comments in here and the opinions, because I think they're rather subjective opinions, reflective of that individual or the government in general or particular people on the committee? If in fact there is to be some legitimacy attached to this whole process over the course of the next four days, the defender of the document, the instituter of the document, the motivator behind the document should be that first person, and I'm wondering why he or she isn't.

Mr Chair, I'd like the answers to those questions before I vote.

The Chair: Thank you very much. Would you care to respond, Mr Clement?

Mr Clement: I'd be happy to respond, to answer to the best of my ability the members' questions. It is a document that was produced by the Premier's office, has been approved by the Premier. He is the head of the government so it is both the Premier's document and it is the government's document. It is a discussion paper. It has opinions in it. It has beliefs in it. It has the opinions of the Premier, which I'm sure he will be challenged to justify in the Legislature, as all premiers have to justify

the policies and the opinions of the government of Ontario. There's nothing unusual in that.

We're getting sidetracked into this, you know, who are the special interests? I've heard each and every one of the honourable members opposite say in the Legislature in the last year that I've sat in the Legislature that special interests have taken over the government. I would even challenge them to identify the special interests and I guess we could spend half the day arguing about whose special interests are special interests.

Mr Phillips: I challenge you to find where I've said that.

Mr Wildman: Yes. Get a quote out of Hansard where I've said that.

Mr Clement: I will amend my comments to say certainly members of each of the parties represented opposite have said on one day or another that we have been captured by special interests. There seems to be a discussion in Ontario about special interests and their role in governance that the honourable members' parties opposite have raised over the last year. That's the only year that I can speak to. It seems to deserve perhaps a commentary and perhaps improvement. If we can improve the democratic process, perhaps this discussion paper is the start. I hope that answers the concerns raised by the members opposite so we can proceed.

The Chair: I would like to proceed on a vote on Mr Phillips's amendment that a member of the government, I believe, be invited to explain this. Is that essentially —

Mr Phillips: Actually the motion said, because Mr Clement said this is the Attorney General's bill, that the Attorney General —

Mr Clement: There's no bill, Gerry.

Mr Phillips: The discussion paper that we are here to discuss. I will say to the public, the government seems to me afraid to bring forward somebody who wants to defend this discussion paper.

The Chair: All in favour of Mr Phillips's motion? Opposed? The motion is defeated.

Mr Clement: Are we on to the main motion?

The Chair: Are there any other amendments to the subcommittee report?

Mr Silipo: Mr Chair, I don't want to push this for too long, but there was an issue raised about the usefulness of having research do some work and present to the committee. I think it would be useful as a committee that that issue be resolved and be clear so we would get it. I assume there wouldn't be disagreement among committee members about the usefulness of getting research. In fact, we did talk about this informally as well and I assumed that we would be having fairly early on some overview given to us.

The Chair: Certainly, Mr Silipo, and while that discussion was taking place, I was speaking with our research officer here and he's indicated that that information can be made available to the committee this week for sure.

Mr Wildman: Will it be early in the week or late in the week?

The Chair: I asked him for whatever information as early as possible could be provided, Mr Wildman. Thank you very much.

Mr Wildman: I wasn't being facetious when I said that. The reason I asked is that I'd like to have the information so that when I get someone, for instance, as distinguished as Mr Boyer before the committee, I'd like to be able to ask him questions about the legislation in other jurisdictions.

There's a report that we have before us from this morning's Globe and Mail which describes in some detail the legislation in British Columbia, which, from my reading of that article, indicates that it is probably very difficult to use that legislation in British Columbia. There may be good reasons for making it difficult or reasons for making it less difficult, and I'd like to have that kind of information so I could make the best use of the witnesses who appear before the committee.

The Chair: As I said, we will undertake to get you that information as soon as is practically possible.

Are there any other amendments to the subcommittee report? We'll now move to a vote on acceptance of the subcommittee report, which was initially Mr Clement's motion. All in favour of that motion? Opposed? The motion is carried.

Mr Wildman: Could I ask one question just before you proceed?

The Chair: Okay, Mr Wildman, if it's brief.

Mr Wildman: I note from the list we have from the clerk that there are a lot of time slots to be confirmed, particularly as we get later in the week. On the last day, particularly, they're almost all to be confirmed.

The Chair: Just to explain for a moment. Of course, it's the subcommittee's instructions that the clerk works on to fill the appointments for this committee, and Ms Freedman will discuss it with you at this time.

Mr Wildman: I'm sorry, I didn't have the latest one.

1030

OFFICE OF THE CHIEF ELECTION OFFICER

The Chair: I'd like to call forward our first witness today. It is Mr Warren Bailie, who is the chief election officer at Elections Ontario. Welcome, Mr Bailie, to the Legislative Assembly committee.

Mr Warren Bailie: Thank you.

The Chair: We look forward to your presentation. Could all of you introduce yourselves for the purposes of Hansard before you begin.

Mr Bailie: With me is the assistant chief election officer, acting, Lorie Wells; and Wilfrid Peters QC, who is the legal adviser to the chief election officer, from the Attorney General's office.

Mr Chairman, members of the committee, I have a great deal of research on this subject anticipating that at some point we might be asked to supply some information or data. My staff has studied the referendum legislation in the other provinces in anticipation that a compendium of referendum legislation in other jurisdictions would be helpful, and this kind of information, of course, will be made available.

I've been asked to respond to the paper on referendum, and I'd like to respond in this way. I have some comments that I would think helpful to any committee considering whether we're going to have referendum

legislation or not, and I'll proceed with that and be happy to answer questions following that, if that's agreeable.

I think the first thing the committee would want to do to advise the government is that the consultative process of referendums could take three different forms. One is where it is a referendum by definition, and it's a matter that having been voted on, and if positively voted on, would be a reference to the government or to the House to take action.

Then there's another type of referendum question that comes up in other jurisdictions, a deliberative referendum, such as commonly happens in Switzerland, France and the USA, where the government is required to follow the directions they receive from the vote.

Another type of referendum that we don't hear much about, and I guess it happens just occasionally, is the arbitration referendum. An arbitration referendum is held when there is a disagreement between the public authority, such as the government and Parliament, and the Legislature. The electors are then asked to resolve it.

The instrument of direct democracy is a decision that you people, of course, have to make, and all I would want to do is share with you my concerns and thoughts on procedure.

I think the most important point I'd like to leave with you is the timing of the vote. If it's a province-wide referendum, the only difficulty we would have is that it occur at the time of a general election. It would make it more difficult, but there's the obviously huge saving that would accrue from having it at the same time as a provincial vote. So timing is important.

If there's to be referendum legislation that is supervised by the Office of the Chief Election Officer but takes place in municipal situations, then it's fairly important that timing be brought into the legislation stating that it must be at the time of a municipal election, if that's your final decision; and if not, that there be a space between electoral matters such as a municipal election and a referendum vote so they don't come so close together that there is the possibility of confusion.

Another very important point on timing is the ballot wording. I know from discussing this matter with my colleagues in the other jurisdictions that this has presented some difficulties, that a referendum was beginning and the final wording wasn't settled. It's been pointed out to me that this is a considerable problem because nothing more than such a practical matter as the size of the ballot is important so that the jurisdiction or the office running the vote would have a knowledge of what size the ballot could be so quotations could be received and ballot paper prepared before the writ is issued.

The ballot itself is a contentious issue in some jurisdictions. You want to be careful that the legislation dealt with the matter of the form of the ballot. My colleagues in the other jurisdictions have cautioned me on several occasions that this has been of concern to them, that it be stated in the legislation rather than left to the discretion of the chief election officer.

The list that will be used in the election: We are already proposing for consideration changes to the Election Act, so we feel that for a referendum, if there is to be one, we should have a complete and separate

referendum act that would state how the lists would be generated and such other matters as a manager of the No vote and a manager of the Yes vote so we'll know, in a technical sense, who is going to appoint the scrutineers, who has the authority to appoint scrutineers.

All these matters are not difficult to handle, but they're things that it's important to be aware of over and above the wording of the referendum.

The information: It's very important, from our point of view, that questions that will surely come up following the issuing of the wording of the ballot shouldn't be handled by Elections Ontario. We would recommend that there be an information office, and if there is a very difficult question it might be decided there should be two information offices. So if a member of the public phones up and starts to ask questions about, "What does this question really mean?" those kinds of questions, they really shouldn't be answered by technicians such as the people at my office. I would strongly recommend that there be an information office set up by the government to answer these questions in a fairly neutral manner.

The whole subject of poll officials comes up. Who would have the right to nominate the enumerators, if there were to be an enumeration, and who would have the right to nominate the poll officials and the scrutineers? That should be clearly dealt with and established in the legislation.

Another subject comes up: recounts. We all have heard from a recent referendum that there will be this problem of close votes and requests for recounts. It seems to my staff, after studying the matter very closely, that there should be some very clear legislation on recounts that is quite different from the recounts and the wording on the recount that we have in the Election Act. After all, in any electoral district someone might apply for a recount because the vote is close in that jurisdiction, but overall the vote across the province, where we have a province-wide question, a province-wide vote, isn't anywhere near close. We just couldn't use the present legislation or even an adaptation of it. It would have to be completely different.

1040

We'd have to establish where the referendum committees would apply and to whom they would apply and the grounds that they would need to ask for a general recount and such questions as, should the recount be automatic if the overall difference between the vote or the plurality is very close? Then we get down to many different questions: Should the chief election officer conduct the first recount to reduce the potential cost or to ensure efficiency?

There are a number of questions like this. We don't have a particular position on whether there should be a referendum. However, we feel that if there is to be one, we'd certainly welcome the opportunity to deliver to you, as it were, our concerns.

I don't have these comments down in black and white so I can hand it to you. We've studied the matter very carefully. We've been studying it and restudying it. Every day new issues arise and we're waiting to see what the final bill is going to look like. We'd certainly be prepared

to offer our comments on it. I'd be happy to try to answer any questions, Mr Chairman.

Mr Phillips: I appreciate your being here. Just so I have some idea of the cost involved in a referendum — I know your advice is to have the referendum at the time of a provincial election, which may or may not work; I can imagine that there would be, if this goes ahead, other times — I guess two questions: One is, what is the cost roughly of a referendum; and secondly, is there anything at all that we should know about a provincial referendum being conducted by municipal officials at a municipal election?

Mr Bailie: Let me deal with the last part of your question first. For several years before coming into the office and for several years following coming into the office, we did have provincially supervised local or municipal referendums, liquor plebiscites, and it just happens more by coincidence than anything that I was involved in those liquor plebiscites. Our office supervised them so that the ballots would be uniform. In other words, the municipality would be running a vote, but number one, it had to apply to our office so we would know whether the three years had passed since the last requested referendum. Also, they would submit the proclamation they were going to put up to our office to approve it, make sure it was in the approved form. Once the ballots were printed, they would come back from the clerk of the municipality so that the Office of the Chief Election Officer could examine them and make sure they were in the prescribed form, the prescribed wording. If we're talking about a municipal one, there is certainly need for legislation like that.

A province-wide referendum, if it were conducted outside a general election or another electoral event, would cost approximately \$40 million, if an enumeration were involved. If the proposals that we're studying now are used, that a form of register of electors be used, and we are able to save some money and reduce duplication and use the latest technology, we're talking something in the neighbourhood of about \$28 million.

If it were combined with a general election, we haven't really got a handle on that, but we're talking about an amount, combining the two, of something in the neighbourhood of \$55 million to \$60 million, if they were combined. One of the strong pieces of advice I get from my colleagues in the other jurisdictions is that you have to be careful presuming that the poll officials can handle both votes at the same time. The counting goes late into the night and they aren't working at peak efficiency and so forth. I would anticipate, if my opinion were sought, that there would be additional poll officials there, if they were combined, so we would have additional costs, and we're talking about figures in that. I haven't researched that point very carefully, because as you pointed out, this is a new subject and we're not sure which direction we're going to go.

Mr Wildman: Thank you for being here and presenting those comments. When you said that it might cost \$28 million using a different approach, you're talking about a permanent list? Is that what you're talking about?

Mr Bailie: The term we would use is "continuous roll," what people usually refer to as a permanent list.

Mr Wildman: That of course would affect the cost of elections in Ontario too?

Mr Bailie: Exactly.

Mr Wildman: I have a couple of questions with regard to the other jurisdictions. I note that there is some background material that has been provided just this morning to me — I don't know when other members received it — and I appreciate that. I referred earlier to an article that was in this morning's newspaper regarding the Western Canada Wilderness Committee, which is attempting to initiate a referendum in British Columbia on bear hunting. If your suggestion that for technical and cost reasons it might be an idea to have referendum legislation designed in a way that would ensure that any referendum might take place in conjunction with a provincial election or municipal elections, a referendum such as this could not be initiated — I guess it could be initiated, but it wouldn't take place — until the next provincial election or the next municipal election, if your proposal were in place.

Mr Bailie: That's the consideration the Legislature has to make, whether it would have to wait until the next general election or it could take place at any time, as well as.

Mr Wildman: Of course, in balancing the need to ensure that people have the opportunity to have their views canvassed with fairness, and with cost as well, that's a serious consideration as to whether or not a referendum could be initiated at any time; and second, if one has been held, you also mentioned whether there should be legislation prohibiting the same question or a similar question being put within a certain period of time, such as three years, when you mentioned about the wet/dry votes in days of yore. In the information that you have, in the other jurisdictions in Canada as well as British Columbia, how are referenda initiated? Who does it?

Mr Bailie: We have this compendium here. I brought only a few copies; as I say, I don't know just how much material. But in each case there is a procedure. Usually it's a government initiative, but in British Columbia, the case you mentioned, there is provision for the public to have what we call initiative legislation. I could go through this, if you like.

Mr Wildman: If you've got it, and we have information here, I don't think you need to go through each one. What you're saying is that in most of the legislation, unlike British Columbia, it is government-initiated?

Mr Bailie: Yes.

Mr Wildman: So the question would be designed by the government and the wording would be determined by the government in most jurisdictions, such as Quebec with the referenda they've held with regard to the future of the province in Canada?

Mr Bailie: That's my understanding, yes.

Mr Wildman: Obviously, who designs the wording and what the wording is has a great deal to do, often, with the outcome of the vote. I don't expect you want to comment on that.

In this particular article about British Columbia, since it's legislation that allows for the public or members of the public to initiate, there is some discussion about the fact that some people think it is too difficult to use the

legislation in British Columbia because in order to have a referendum, they only have 90 days and they have to sign up at least 10% of the voters in each of the ridings in the province in 90 days. Then, if the referendum proceeds, they have to get 50% of the registered voters, not 50% of the people who vote, in order to approve or to win the referendum. This legislation also allows for recall of MLAs in British Columbia and it's even more stringent there. They have 60 days and they have to sign up 40% of the registered voters in the riding of the individual they're attempting to recall.

Is British Columbia the only province that has legislation that allows for individuals or groups in the public to initiate a referendum?

1050

Mr Bailie: I believe so, but I would have to go over my notes more carefully to answer your question. Perhaps we can supply that answer later.

Mr Wildman: One of the arguments in this article that I'm referring to, which I think all members have, is that in British Columbia it costs — I think it's \$18 million for a province-wide vote. Yes, \$18 million. The argument is that it shouldn't be too easy. If you're looking at that kind of expenditure, it shouldn't be something that should be initiated and carried out very often.

I'd like to have some further discussion, Mr Chair, about the differences between British Columbia and other provinces. Many of us may know about Quebec, but I'm not sure all of us have had the chance to go through this background information and see the differences in other parts of the country.

The Chair: Research staff will endeavour to get you more information on that, Mr Wildman, as well.

Mr Clement: Thank you very much for your presentation. I just note for the record, Mr Wildman, it looks like Saskatchewan, according to the chart that we all have, also has an initiation procedure. The petition has to be signed by not less than 15% of the electors in Saskatchewan.

I just wanted to get some clarification, Mr Bailie, on your views about teaming up referendum questions at the time of municipal elections. Are you saying there is a possibility of confusion if the ballots occur at the same time, or are you saying that as long as things are organized properly there wouldn't be confusion?

Mr Bailie: Mr Clement, I share with you only what my colleagues have shared with me, that if I had an opportunity I should say that it's important to have a certain space of time. Naturally, if it was important to have the two votes closer together, then you would have to be very careful to make sure that it was understood that when people voted at the one, they weren't late for the other. We produced some information brochures and I would certainly suggest very strongly that the information to the public be very carefully handled and so forth, as well as an information office.

It doesn't mean that they couldn't be close together, but we'd have to be very careful that the information the public would like would be there, and if there's going to be balloting across the province, that it be a uniform style of ballot. If somebody changes the size of the wording even slightly because there's a large number of words —

you would want, I believe, to have a uniform size of type so that in one municipality someone couldn't make the claim, "I didn't quite understand because the type was so small."

Sometimes initiatives and referendums require a lot of words and it would affect the size of the ballot. You would go for the larger ballot rather than reducing the typeface. Those are the kinds of concerns I would have.

Mr Clement: Do you see it as conceivable that the referendums would occur at the same time; that is to say, since we have a province-wide municipal election with a common date, throughout all the municipalities that I know of anyway, that we could somehow piggyback, I suppose, a provincial question on the municipal voting day? Perhaps it would be a completely separate ballot with its own typeface. It would be printed by Elections Ontario rather than the individual elections offices in Toronto, North Bay, Timiskaming, whatever. Is that conceivable, from your perspective?

Mr Bailie: Oh, yes, very definitely. I just recommend that these matters be given careful consideration, the ones you've mentioned, about type size and so forth.

Mr Clement: Fair enough. Thank you.

The Chair: Mr Bartolucci, you had a question.

Mr Bartolucci: Just following up on a couple of your ideas, Mr Bailie, because I think they need a little bit of clarification, especially at \$40 million a shot or \$58 million combined. I know your office hasn't established a policy — you've indicated that earlier in your presentation — so I'll ask for your personal opinion. What issues deserve referenda, as far as you're concerned, if any?

Mr Wildman: Warren Bailie's appointment.

Mr Bartolucci: That's a fair question, because I'm asking for his opinion.

Mr Bailie: Well, I have been an elected representative for 14 years myself in the municipal area. I had to make decisions on the needs in the board of education in which I was involved, and I had a consultative process, as I'm sure all you gentlemen do, which was keeping in close touch with the electorate. We talked about serious matters like school busing and the distances young people would have to travel. We did consider having a referendum. In the final analysis, that didn't take place.

I think there is a place for public input. Number one, it should be to the representatives they've elected; I'll state that. However, the feeling of the public is very clear to me that they want to have more opportunities for input and that's why, in anticipation that this might happen, we've done these studies. But I don't really have a firm opinion on it, frankly. What I might say is, I've elected you people and I expect you to make that decision.

Mr Phillips: Better have a referendum on why we do this.

Mr Bartolucci: Yes. Then are you personally in favour of mandatory referenda or not?

Mr Bailie: A referendum that would be a mandate to the government to take action?

Mr Bartolucci: Yes.

Mr Bailie: Personally, I'm only in favour of referendums, not really plebiscites, which I feel are mandates. That's just a personal opinion. I'm in favour of referendums because I think every bit of information that you

people as representatives can bring to a subject to decide it is good and helpful. But referendums that mandated the government to do something, I'd have some concerns about that, personally.

Mr Bartolucci: Sure, and I'm asking for a personal opinion. You wouldn't be in favour of citizen-motivated initiatives then.

Mr Bailie: As long as they were referendum questions; in other words, they're referring their opinions to the government and the Legislature to decide.

Mr Bartolucci: I'm sure later Mr Boyer will define the difference between a referendum and an initiative clearly, because there is a distinction.

Let's get back to the timing of a referendum, because I think that's important as well. How do we get by the problems associated with having a referendum at the same time as a municipal election? For example, I come from Sudbury and I live in Sudbury. If I owned a cottage in Walden, I am able to vote in both municipalities. How would you ensure that the idea in Ontario of provincially one person, one vote is protected?

1100

Mr Bailie: We've given some thought to that because it is an important question. I happen to have the right to vote in several municipalities myself, but in a province-wide referendum question it would be important for us to make it clear in our information services that you had one vote in the provincial question and that was it, and then to ensure that careful study of the electoral rolls was such that we could police it.

Mr Bartolucci: But in all honesty, with all due respect for your background, it would be impossible to police. Correct?

Mr Bailie: It certainly wouldn't be easy.

Mr Silipo: Mr Bailie, you had some materials that you were referring to. I don't know, Mr Chair, if those are included in the binder we have. If not, I would just ask if it would be possible for us to get those, because I have a sense from your presentation that they go into a little bit more detail into some of the things you were commenting on at the beginning.

Mr Bailie: Yes. The material we have, of course, would be readily available. This is our first opportunity to make that offer.

Mr Silipo: I, for one, would certainly appreciate getting that.

The other question I had was, in your looking at whether it's just a Canadian experience or indeed that of other parts of the world that have used referenda, are there any instances where there have been referendums on a variety of major — well, a major or minor issue; that's a subjective term, I suppose — but on issues that involved more than one question, in other words, a referendum that was divided into various parts?

I think back, for example, to our last experience with the referendum here in Canada, the constitutional accord, and am particularly wondering whether in an instance like that there may have been jurisdictions that divided up the various pieces of that into a series of questions, allowing or asking people to vote on different pieces as they so chose.

Mr Bailie: Yes. I guess the best example is, in 1991 Saskatchewan had three questions on the ballot. That's why legislation would have to carefully address the concern you're expressing that there be anticipation of a yes/no vote but then a varied result like three different, variable questions and so forth. I have actually had the opportunity through Elections Canada to represent Canada at referendums in other countries. In Africa, in Malawi, for instance, there was a referendum that was a strictly yes-and-no one. They're the easiest. But where you have three or perhaps four questions, even more care has to be taken.

All of these things can be addressed. I just caution you that a lot of thought has to be given to the way the legislation is worded, and that's why I recommend a complete Referendum Act rather than an adjustment of the Election Act.

Mr Silipo: Is it your sense from what you know of the Canadian and/or international experience that it follows pretty much a standard practice that whenever you have a referendum, there has to be established — you used the words "Yes and No committees," I believe — but in effect an apparatus that allows for information to be given to the public on behalf of both sides of the question that's being put? Does that follow as pretty much a standard approach that's taken whenever there are referenda, or is that more the exception?

Mr Bailie: No, I don't think it is the standard approach and that's why I bring it to this forum. It's important, from my observations, that there be a clear understanding that there would be a Yes committee and a No committee and in the case of variables, there would have to be consideration for a committee for each question.

No, I don't think it's standard, but I think that our legislation would be wise to include that type of wording.

Mr Silipo: One last question I would have of you: My interest is around the issue of whether at the end of the day there should be a law that governs referenda, as opposed to the issue of whether we should have referenda or not. I, for one, certainly believe that there are times when it's very appropriate for there to be a referendum. I'm not as certain about the need for a law that governs that, because I'm not sure how you can appropriately foresee a number of the dynamics, but what I hear you saying is that if the government is at all contemplating getting into the use of referenda on a more regular basis, it would be useful for there to be a law. I don't want to put words in your mouth, but that's what I'm picking up from what you're saying. Is that a fair conclusion?

Mr Bailie: Yes. I anticipate that there will be referenda. They're becoming more popular in the minds of the public; that seems clear. The incidence of referenda is increasing in Canada. We would want to be prepared so that we have the technical rules very clear in our minds, so that whenever the Legislature decides to have a referendum, we would know exactly how to proceed.

Mr Marcel Beaubien (Lambton): Mr Bailie, good morning. You mentioned, in your presentation, ballot wording, that it is a very critical part of the whole process. You also alluded to the fact that the constituents, the voters, should have more opportunity for input. I

certainly agree with this. What gives me great concern is, since the answer on the referendum is usually a qualified yes or no, how would you draft a question? I don't really know how to pose the question, because that's a difficult one. Some people, some legal departments can stick-handle with the English language whereby they will direct the voters in a certain direction, as opposed to a clear, concise question on the ballot. How would you address that particular dilemma?

Mr Bailie: It's a difficult question, but the answer is easy: The wording of the question of course would have to be handled by the government and approved by the Legislature. We just point out to you that it is a very important matter; you can see that. I don't know whether you're talking about that question about, "Have you stopped beating your wife, yes or no?" Obviously, it has to be carefully worded in the two official languages. We just want to make sure that the legislation would preserve the time to see that this care, which you obviously have a sense for, is in place in the legislation.

Mr Beaubien: I am sure, if we look at the experience that occurred with the referenda that occurred in Quebec in the past number of years, that the question was drafted by the government and probably approved by the Legislative Assembly. But did it really reflect the question that people were concerned about, or the concerns that people had with the issue itself? I agree that the government probably has to draft the question, but there have to be some checks and balances in there to make sure we address the point. I don't really know what the answer is; I don't know if anybody's got an answer. That gives me great concern, because the answer will be yes or no.

Mr Bailie: Or in the case of a variable, half yes, half no and so forth. All I can say is that I think it's good that you do realize the importance of the drafting of the wording and that it be clear and so forth. My opinion is that this is an important matter and you people must address it, and that's about all I can say on that. I'm sorry, I'm not really dodging the answer.

Mr John Hastings (Etobicoke-Rexdale): Thank you, Mr Bailie, for appearing before us this morning. You were referencing earlier that Elections Ontario was involved in the framing of the question on wet or dry outlets, I guess, in municipal elections so that it would be a standardized question for all those municipalities holding such a referendum in a municipal election. Can you tell us whether Elections Ontario also framed the question or ensured the clarity of the question in the fluoridation issue of the 1940s and 1950s, or were those questions all independently phrased by the city clerk or town clerk, be it as it may?

1110

Mr Bailie: One of the difficulties we have — we've done a lot of research on this matter. I don't know if you're aware, but I'm the first full-time chief election officer. Up until I was elected by the Legislature, the chief election officer was a part-time official who was also the Clerk of the Legislature. So we don't have to support us a lot of information that was carefully kept and catalogued. But in case what I said about the liquor plebiscites was misunderstood, the wording was very carefully established in the legislation. The Office of the

Chief Election Officer was to examine to make sure that wording was followed faithfully on the ballot and in the appropriate type size, but we didn't have anything to do with the wording. It was established in the legislation and it was very clear that our job was to make sure that no one changed it either accidentally or for any reason.

Mr Hastings: But on fluoridation?

Mr Bailie: Fluoridation: I've already looked, but all we have on the subject is that we know the vote took place. I'm sorry, our research on that is not good because our records are almost non-existent.

Mr Hastings: On the issue of costs of referenda, when you talk about anywhere from \$28 million to \$55 million, depending, I guess, on the number of people hired, on the polling, on when referenda are conducted — in conjunction with either a municipal or a provincial election — are you trying to anticipate or factor in the pricing of information technology in that scenario, or are you just excluding that entirely and looking at the cost of conducting a referendum, either province-wide or in conjunction with municipal elections, in the more traditional manual sense of how you already carry it out?

Mr Bailie: I think that's another good question, and the way I would answer is that just as in a general election our office gets information out to the public on how the system works, we would do that and we would expect at the same time that the initiator of the referendum would make sure that the intent behind the referendum and the pros and cons of it would be out as well. In that figure there would certainly be information services similar to what we already provide in a general election, but there would have to be more than that done by the Legislature or the government.

Mr Hastings: Do you anticipate then that the cost could be significantly higher if you were implementing a new information technology?

Mr Bailie: At the present time, we're already looking into it. In that figure that I'm giving you is information services that we would be prepared to not only supply but enhance, and it would be all in that quote.

Mr Hastings: When you say "services," does that also include software and hardware? Are you talking about it in a computer context or in the more traditional way it's now carried out?

Mr Bailie: The information technology that I'm talking about — I'm assisted by my assistant here — would be computer technology. We already have that; we've been developing it over the last two or three elections. We would be able to supply discs, as we do now in some cases.

Mr Hastings: Would that also be assuming that you see in that scenario a permanent voters' list?

Mr Bailie: We have been looking at the establishment of a continuous roll of electors, ie, a permanent voters' list, and we would be recommending that consideration be given to a continuous roll because of the large savings and the savings in time. One of the things that a continuous roll of electors would allow us to do is have a shorter election period or a shorter referendum period. There are opportunities for savings, reducing duplications, that would be quite substantial.

Mr Phillips: One of the objectives, I gather, of this initiative by the government is to limit the voice of these well-heeled special-interest groups. Do you see a need in this legislation to define the spending of both sides of the issue and do you see a need for public assistance for either side in this issue to make sure it isn't just the well-heeled special-interest groups that hold sway?

Mr Bailie: I certainly see a need for these matters to be very carefully addressed in your discussions because, as you're well aware, in the Quebec referendum, funds were supplied from the government treasury to both the Yes and No committees. There was an attempt to very carefully control contributions and expenses. I think there would be the expectation in the minds of the public that something of that sort might be included in a referendum bill.

In the federal referendum I'm sure you're aware that any number of committees could register. A committee could just be a committee in this electoral district and actually not operate in any other electoral district. It was fairly wide open, but it was a referendum held on very short notice, and perhaps on reflection that legislation would have been different. Which really gets back to the point that I want to leave with you, that a great deal of thought must be given to the legislation before. I would suggest with regard to the legislation used in the Canada-wide referendum that there was not enough thought given to some of the rules, and I think on reflection the same people would have added a few more strictures and regulations.

Mr Phillips: Is the Quebec model one we should look at?

Mr Bailie: It's very strict, and maybe more strict than you'd like it to be. I would suggest that there has to be somewhere in between, that people will feel comfortable with the legislation but still feel it covers the concerns that we have and you've expressed and I've expressed. There must be a happy medium, which I'm sure the minds of the Legislature will divine.

Mr Silipo: If we're so allowed to do.

Mr Wildman: Some of the things you've raised have raised further questions in my mind. I'd like to pursue what was just discussed, but before that I'd like to ask you a question about wording. You talked about the importance of the wording. At the time of the last Quebec referendum, there was a great deal of discussion around the wording of the question. In the last analysis, I think both sides came to the conclusion that it didn't really matter what was the wording. Everybody knew what they were voting about; that is, whether Quebec should leave or stay in Canada. How do you square that view of many political scientists with your concern, which I think is genuinely held, about ensuring the wording is clear and concise and fair?

Mr Bailie: That's probably the most difficult question you have posed, but I feel that's the responsibility of the Legislature. I think it is important, because there were many people who were members of Parliament and so forth suggesting that there was some confusion in the wording, there was some confusion about what the people were voting for, because some people thought they would vote on this and there would be some new special status

for Quebec but it would still be all included in the overall Canadian federation. I'm sure you'll agree that there were a lot of people who thought that's what they were voting on. It didn't seem to me from the wording of the question that this was the case.

It reinforces the point, and maybe I shouldn't have even brought it up, because I'm sure you knew you had to take care of it. Just make sure that whenever it happens the wording is decided before the writs are dropped, is what I caution, because some of my colleagues have had the word that they should get ready for the referendum and some of them were still working on the wording. They've cautioned me, "Make sure you don't get in that position if you can possibly avoid it."

1120

Mr Wildman: I appreciate your comment, because it is true that there was some evidence subsequent to the vote in Quebec that some of the people who had voted Yes still thought they would be sending MPs to Ottawa if the Yes had won. So there may have been some lack of clarity.

To your knowledge — and I'm going to ask others the same question, so if you can't answer it, fine — has there been any work by political scientists on whether it's easier to get a Yes or a No in a referendum? In a general sense; I don't mean necessarily related to specific questions.

Mr Bailie: No. In all I've read, I haven't seen anyone deal with that particular subject or I've skipped by it because I'm working on the technical aspects of it. But I'd be interested to hear, and I'm sure your witness for this afternoon will be able to answer that much more readily.

Mr Wildman: All right, thank you. My other question relates to the suggestion that referenda might be held at the same time as provincial elections or municipal elections. That raises two questions. Let's say there were three different groups that wanted to have referenda on three very different issues. If the legislation said that it would have to be held in conjunction with the provincial election, you might in fact be voting on a number of very different questions and be having a number of very different campaigns going on all at the same time. I can understand the complexities of that in relation to the technicalities, but in your view would that be something that would be a good thing?

Mr Bailie: No. I think if a situation occurred where two or three initiatives had come forward and were approved for a vote, to combine two or three completely separate questions at the same time as a general election, where we certainly have questions, for the information services to work, it would be very difficult.

Mr Wildman: The other thing is, if you have it at the same time as an election, just one question, is it not conceivable that politically the referendum campaign will have a significant effect on the provincial general election and vice versa?

Mr Bailie: One of the main reasons that one might suggest you have it at the same time as a general election or at general and municipal election time is that you would get a better turnout. If you had a question on the ballot and the turnout was 29% and it was a very close vote, you'd have to ask yourself, do you really have an

opinion? When my colleagues recommend that it's good to have it at the time of a general election, they're saying that you have a better chance of a bigger turnout, so the opinion is more helpful.

Mr Wildman: I think that's probably true. I'm guessing, but it would seem to me that in an election campaign when there was a major question on the ballot, all candidates in the provincial general election would be asked regularly at public meetings by the Yes or the No sides what their views were on the question, so that itself would then become an issue in the election campaign. So it might beg the question, why not just have an election and have people ask their candidates what their views are and then vote on that basis?

The Chair: Are there any other questions for Mr Bailie?

Mr Tom Froese (St Catharines-Brock): Thank you very much for coming and sharing your comments. From the background information I have, I think you have some comments and some opinions on advance polling on a referendum, people voting in different ridings at advance polls. Would you share your ideas on how, mechanically, you think that would work and what some of the pros and cons are with respect to that?

Mr Bailie: It's a good point. We have looked at that, though I would say not in the detail it deserves. We would anticipate that if we had a province-wide register of electors, which we are studying and working on now and will soon be recommending to the Legislature, we would then be in a position to accept the idea of a province-wide advance poll. In other words, if you were out of your electoral district, your name would still be on the master list, so as long as you were anywhere in Ontario, you could vote in any electoral district.

That's partly because of visiting two or three general elections in BC. I don't know if you're aware, but even before they had referendum legislation, if you were outside your electoral district, you'd still go into the poll and vote, and your ballot wends its way finally to be registered in the right electoral district. So it is possible, and there wouldn't be in our view a good reason to not allow a person to vote outside their electoral district, but their vote to be registered, because you have a province-wide question rather than in our general election for candidates, where you're electing a particular person in a particular area. So there's the possibility of that.

There's the possibility of us having legislation that would allow for mail-in ballots. At the present time, as you're aware, we just have a proxy vote. But a lot of the jurisdictions in Canada are moving from the proxy vote to a mail-in ballot. Certainly at a time like this, at the time of a referendum, a mail-in ballot would have more advantages in a province-wide referendum than it would in a general election for candidates.

There are all kinds of things that we're studying in anticipation that our opinion might be sought on these matters.

The Chair: Thank you very much, Mr Bailie, Ms Wells and Mr Peters, for participating in our committee discussions today. Your advice has been very, very helpful and we appreciate the time you've taken to make this presentation.

MINISTRY OF THE ATTORNEY GENERAL

The Chair: Our next presenter is Michel Hélie, who is a counsel in the Attorney General's office, constitutional law branch. Welcome to the standing committee on the Legislative Assembly. We've set aside approximately an hour for your presentation.

Mr Michel Hélie: Thank you, Mr Chairman and committee members. As you know, I'm a counsel in the constitutional law branch of the Ministry of the Attorney General, and I've been asked to provide you with a brief overview of the government document, the consultation paper, entitled *Your Ontario, Your Choice: A Preliminary Look at the Referendum Alternative*.

The Ontario government is committed to using a referendum process to increase public participation in government decision-making. The government's view is that fundamental questions of public policy should be decided using referenda, and in particular that tax increases and the approval of more casinos in Ontario should be subject to a referenda process. Every province and territory in Canada except for Ontario, Nova Scotia and the Yukon has a referendum process in place. The government is of the view that it's time for Ontario to establish such a process.

The consultation paper was released because the government is committed to having a referenda process, but it is also interested in hearing the public's views on that question, not only on the alternatives that are suggested in the paper but any others that the public may have. The problem identified is that significant changes in public policy may lack legitimacy because the public may disagree with the new direction taken if they have not had an opportunity to be heard and to participate in the decision-making process. This problem is particularly acute where after an election a government pursues a path which is distinctly different from the path espoused in its electoral campaign. Similarly, special-interest groups may achieve, through lobbying efforts of the government, certain changes in government policy that may or may not be shared by the majority of people. The goal is to give the public the opportunity to be heard by elected officials and to give the public control over major public policy decisions.

The solution is to establish some process of public ratification of government decisions. A referendum mechanism is one way of doing that, with the result being that the public are more likely to feel bound by decisions in which they have participated and thereby to feel less disfranchised.

1130

Throughout my discussion I use the word "referendum" in the singular and "referenda" in the plural in the very ordinary sense of its meaning, which is some kind of process by which the electorate is asked to vote on a question. In political science, there are several terms that have very technical meanings, and I'll just outline what they are, to the best of my knowledge, for that purpose.

The first is the difference between a "plebiscite" and a "referendum," the plebiscite being a vote by the electors on a question which only has moral or political persuasive force; that is, that isn't legally binding and has

no legal force unless the Legislature chooses to act in accordance with the plebiscite vote. The referendum, on the other hand, is the same kind of vote, but in this case it has legal force either of its own effect through some process or it in some manner compels the Legislature to act in accordance with the majority decision.

The "initiative" is a process by which the citizenry or the electorate is entitled to petition in order to have a question put to the electorate. Typically, one would expect that the electorate would have to achieve a certain number of names on a petition in order to have the question put to a vote. There has been some discussion of the situation in BC, which was 10% in each riding. I'll get into some of the various examples in other jurisdictions further on.

The last term that I'd like to specify the technical meaning of is "recall," which is the process by which the electorate is entitled to express its displeasure with a sitting MPP and have that person removed prior to the end of that person's term. BC, in Canada, is the only jurisdiction with that, and I'll explain how they do it further in this paper.

There are two constitutional implications that are worth bearing in mind when you consider various referenda proposals here. The first is that the referendum process doesn't give the government any greater authority under the Canadian Constitution than it already has, so to the extent that the Canadian Constitution binds Ontario to legislate in a certain way, the referendum process will also be bound. Examples of that would be that there are certain matters that under the Canadian Constitution are reserved exclusively to the federal government to legislate on — the Criminal Code is such an example — the implication being that in a referendum you could not have a vote that would be intended to change any law that would relate only or exclusively to the federal government. Similarly, any law that follows from a referendum process would have to be consistent with the Canadian Charter of Rights and Freedoms in particular, as well as the rest of the Canadian Constitution.

The other constitutional implication to keep in mind is that the Canadian Constitution itself has certain limitations on the kind of referenda process that could be achieved without constitutional amendment. The jurisprudence or the law in this area is quite unsettled, and this means there are a number of different referenda processes or proposals that could be challenged by people as being contrary to the Canadian Constitution. We're of the view that there are very good arguments to defend against most of those challenges. There are a couple of areas where we are not of that view, and I'll indicate those when I discuss the proposals.

In any event, the government is interested in the views of the public on all alternatives, without regard to the legal complications that may underlie them, in order to get a sense of what people want to do prior to determining whether there isn't a way of achieving what it is that people want in a fashion that would be constitutionally valid without a constitutional amendment.

Among the options that are presented in the government's paper are the following:

One would be the standard plebiscite, which would simply be referendum legislation that would permit the government to ask the electorate a specific question or questions and have them vote on it, and the results of that vote would only be morally or politically binding on the government, would not have legal effect.

Another alternative is to prevent the introduction of certain kinds of bills — for instance, tax increases might be one possibility mentioned in the paper — without first holding a referendum, although the result would be again only morally or politically binding on the government. What would be binding is that prior to introducing such a bill, the bill that would be described in the legislation, you would have to have the referendum, the vote would have to be held, but the results of the vote would not have legal force on the government or the Legislature.

Similarly, one could use the same approach, but this time make the results of that vote binding on the government or on the Legislature, in order to validly pass that class of bill. Instead of having a general referendum law that would provide for referenda, generally speaking, on any broad range of subjects, it is also possible within the contents of a particular bill before the Legislature to provide that it doesn't come into force, that is, it doesn't become effective, until after a referendum is held and that the vote be a certain way. Similarly, it's possible to provide in a statute that the statute ceases to have any effect upon a referendum voting to that conclusion.

With respect to options dealing with direct initiatives, the archetypical or quintessential direct initiative would permit Ontarians to propose and enact legislation through a referendum vote without any involvement by the Legislative Assembly or the Lieutenant Governor. This would require a constitutional amendment to achieve.

A form of direct initiative which would not raise this complication would be one which would bind the executive of government to take particular action, so long as that action was consistent with other statute law and administrative law. In this I'm referring to the fact that there are areas of discretion exercised by the government, in which currently the government exercises its discretion. Within the confines of the statute that authorized the exercise of that discretion, one could use a referendum process to direct how that discretion ought to be exercised, always underlining, of course, that this new exercise of discretion, consistent with the electoral vote, is also consistent with the actual statute under which they're exercising their discretion and is equally consistent with the body of law that controls the exercise of administrative discretion known as administrative law.

Similarly, referendum legislation could propose that the electorate be permitted to initiate and enact what is known as subordinate legislation, that is, legislation whose four corners would be controlled by a statute that would make precise the limits as to how it could be exercised. This is analogous to the way municipalities legislate. Municipalities pass bylaws which must be consistent with the Municipal Act or other statutes authorizing the municipality to act. The same thing could be done by replacing in a sense the municipality with the electorate.

There are also indirect initiatives, one of which would be a process by which an affirmative referendum would automatically result in the introduction of the proposal, a bill containing the proposal passed by the referendum, into the Legislature but would then leave the Legislature free to act, to debate the bill and to vote for or against it, as the Legislature sees fit.

1140

Similarly, an affirmative referendum could also require the House to deal with the bill within a particular time frame. Lastly, an affirmative referendum could also provide that the responsible ministry or the government make some response to either the Legislature or to the public as to how it will take into account the referendum results without otherwise binding the government.

Those are among the options that are raised in the paper. As I've indicated, there is referenda legislation in much of Canada at the moment, although we actually haven't had very many referenda in Canada, so our experience is somewhat limited. At the federal level, many, many years ago we had referenda dealing with both conscription and Prohibition and most recently with the Charlottetown accord to amend the Canadian Constitution.

Newfoundland has most recently held a referendum dealing with denominational school rights contained in the Canadian Constitution and the desire to amend the Constitution as it relates to those rights. British Columbia put its own referendum legislation to the people in a referendum. The three questions asked by Saskatchewan were mentioned by the chief electoral officer, and the Northwest Territories has had several referenda dealing with the subdivision of that territory.

Some of the principles found in Canadian referenda law include the following: that they are generally initiated and drafted by cabinet on any matter of public concern; that the procedure of provincial elections is used but not necessarily with restrictions on campaign spending, advertising or public funding, and except in British Columbia and Saskatchewan governments are not legally bound to take action on the referendum results; that is left to political pressure.

Mr Wildman: Special-interest groups.

Mr Hélie: What about them?

Interjection.

Mr Hélie: Anybody, yes, including special-interest groups, would be able to, yes.

Alberta's legislation is not binding except with respect to its constitutional referenda. Alberta has a special provision dealing with referenda asking questions about whether the Constitution ought to be amended, and in that case the government has bound itself to the results. British Columbia and Saskatchewan also allow electorate-initiated referenda with the approval of — in BC it's 10% of the ridings, as was mentioned by Mr Wildman, and in Saskatchewan it's 15% of the electorate across the board, not per riding. BC's recall legislation doesn't actually call for an additional vote; it's simply done by petition where 40% of the registered electorate petition the removal of a sitting MPP; that 40% petition is collected within 60 days of the beginning of the process, then that person's seat becomes vacant and a new election is held.

Ontario does not provide for a province-wide referendum process at the moment. However, it does provide for municipal referenda provisions, and these were touched on briefly by the chief electoral officer. Municipal councils have the authority to hold plebiscites, that is, non-binding referenda, on any municipal issue. The municipal council or the electorate — so an initiative here with a 10% petition — may initiate a binding referendum at the municipal level with respect to either the commencement or the termination of a fluoridation of water program. Similarly, a municipal council or the electorate with 25% of petition may initiate a binding referendum, although in this case it's not a simple majority; it's a special majority of 60% to determine whether the municipality ought to be dry or wet with respect to alcohol sales and public consumption.

The Municipal Act also requires referenda to be held in certain circumstances; that is, that there is no choice. These include when a municipality wants to annex a neighbouring area, where the municipality wishes to dissolve the municipal corporation and when the municipality wants to reverse the electoral constituencies from a voting at large to ward elections.

Among other countries providing for referenda is Australia, whose Constitution requires a referendum in order to amend the Constitution, which provides for no other legislative referenda process nationwide but where there are a number of states, the equivalent of our provinces, which have established referenda or general referenda legislation.

New South Wales has had referenda on a number of subjects, including daylight saving time, the terms of Parliament, judicial independence, liquor sale hours and subdivisions of the state. Queensland has held referenda dealing again with both the parliamentary term and daylight saving time and aboriginal rights. South Australia, which does not have a general referendum law, has had referenda with a specific law for the referenda. The one that we are aware of is one again dealing with daylight saving time.

At one point in the 1980s, New Zealand was considering entrenching a bill of rights. They don't have a written Constitution so there was some question of how to make that bill of rights binding in the future. Considerable discussion was held and the direction they were moving towards was to suggest a choice for amending such a bill of rights, which would be either a special majority of the Parliament, in that case 75%, or a simple majority by referendum. That proposal was ultimately abandoned and so they did not go any further with it.

However, in 1994 New Zealand did legislate a referendum law that would provide for non-constitutional referenda. However, these would only be citizen-initiated, not government-initiated, would require a petition of 10% of the electorate and could touch upon any topic, although there has been some discussion whether that unlimited scope ought to be narrowed somewhat. The only referendum that we're aware of since the 1994 law has been one which was successful in defeating a government's proposal to reduce the number of firefighters that were employed by the state.

Switzerland has constitutional referenda which are mandatory for any change to their Constitution, require significant numbers of people to sign the petition, in their case 100,000, and require a simple majority across the nation plus a majority in each of at least half of their cantons. They also provide for ordinary legislative referenda, that is, apart from constitutional change, which are not government-initiated, therefore must be citizen-initiated and only provide for the nullification of statutes passed by the government within a certain period of time.

The subjects they have dealt with have included: alcohol and tobacco advertising, the adoption of value added taxes, which is like the Canadian GST, MP's salary increases and social insurance.

The United Kingdom doesn't have general referenda legislation, although they have held referenda in the past, the most noteworthy one being Scottish and Welsh devolution. The government had indicated that in order to be accepted the referendum result would have to include not only an overall simple majority of those voting but also an overall majority of 40% of the entire electorate voting in favour of the proposal.

The Welsh one was turned down by a very wide margin, but the Scottish one was actually a very close vote. It was 52 to 48, but since the turnout was only 64% it was nowhere near the 40% of the entire electorate required under the law and so Scottish devolution didn't proceed,

In western Europe most countries provide for legislative referenda and in fact in most of these cases their constitutions provide for them, that is, the Constitution provides for the ordinary referendum process on general matters. These are mostly government-initiated, sometimes initiated by minorities in the Legislature and in the case of Switzerland and Italy can also be initiated by the public.

1150

There were some questions with respect to Canada in the various jurisdictions. As I counted, they're binding only in BC and Saskatchewan and in Alberta — binding on the government, that is, not binding on the Legislature. Manitoba has a law that requires a referendum prior to any tax increases under certain tax statutes. However, that provision is not binding. It's binding only in the sense that you must have the referendum in Manitoba prior to seeking to increase those taxes, but once you've had the referendum, the government is free to then proceed as it wishes.

In terms of citizen-initiated ones, it's BC and Saskatchewan only, although in the Saskatchewan one what's interesting is that on the general referendum initiated by the government it binds the government, but in the vote initiated by the public, by the electorate, it is not binding on the government. When I say "not binding," I'm always referring to "not legally binding."

The Yukon, which passed legislation dealing with referenda, has not proclaimed that legislation in force. So at the moment, it's not a law.

Mr Wildman: They're having a sort of referendum right now. It's called an election.

Mr Hélie: That would certainly put aside those questions.

The kinds of considerations to deal with in any referendum law are listed, I think, in quite extensive detail in the questions which follow the paper and what's contained in chapter 7 of the paper. I'll just very briefly touch on them.

One is the scope, what kind of question can be asked, particularly important if it can be driven by the electorate. Secondly, who should initiate? Should the electorate be able to initiate or only the government or anybody in the Legislature? What kind of a threshold if it's citizen-initiated? What size of petition is required to put the process into place? If the threshold is very high, obviously, some kinds of question won't get put. If the threshold is too low, you may have very many, with the attendant costs.

The threshold in American states ranges from a low of 2% to a high of 15%. Referenda are a lot more popular in the United States now than they were previously. Between 1991 and 1992, there were 346 referenda across the United States compared with less than 250 in the previous 40 years. California, which has a 5% petition threshold, has had 127 referenda questions between 1950 and 1992, while Wyoming, which has a threshold of 15%, has only had three referenda questions.

What is the referendum question going to be? We all know that confusing questions make for confusing results. What do you do if there are multiple questions and the answers are apparently conflicting between them? Should the questions be restricted to yes/no questions? Should something less clear be permitted?

Voter awareness: How do you ensure that the electorate is sufficiently aware of the issues in order to vote on these questions?

The outcome: What numbers are required in order to feel bound by the decision, either politically or technically? Is a minimum voter turnout required or, like in the Scottish devolution case, even an affirmative vote by a minimum number of the electorate?

Finally, what kind of referenda operation should you rely on? The chief electoral officer talked about the cost and various ways of reducing the cost and whether there are any of the rules that are applicable to electoral campaigns which ought to also apply to a referenda campaign, including questions of limits on public spending on campaigning and that sort of thing.

Those would end my submissions on the paper, which I've tried to summarize. If you have any questions, I'd be happy to try to answer any of them.

Mr Phillips: Hopefully you're the right one to ask, because you're the only government official, I think, that we're going to hear from.

The government has its taxpayers' federation commitments and it says, "Any increase in existing tax rates or new taxes is subject to approval by the voters of Ontario in a binding referendum." I assume from that that it is the government's intention that any increase in existing taxes or new taxes be subject to a binding referendum.

I guess my question is to you because I gather you've been involved in the drafting of this paper. Was it the intent of the government that this paper was going to implement that proposal? I think in your opening remarks you said it was the intent of the government to have a

referendum on — I forget your words, but something like “significant policy issues.” It was early in your remarks that you used those terms. Would things like the sale of Ontario Hydro, the closing of hospitals be regarded by the government as significant policy issues that must be in the legislation?

Mr Hélie: I didn't have any part in drafting the consultation paper, so I don't know what went into its making. Our branch had some involvement when the paper was being drafted with respect to some constitutional issues that had arisen as to how to describe the constitutional risks that were at stake. That's the only involvement our office has had.

I did say that the paper states quite clearly that important questions that are fundamental questions of public policy ought to be subject to referenda. The only two examples I'm aware of are the tax increase example and the expansion of casino gambling. I'm not aware of any others that the government has stated an intention to want to have decided by referendum. As far as the particular examples you've given, again, I have no knowledge of whether the government would consider those worthy of a referendum approach or not.

Mr Phillips: How can we get an answer to that? It's pretty fundamental. If the intent of this paper is — and I'm paraphrasing — that there be a referendum on issues of fundamental policy, who can tell us what was intended by that?

Mr Hélie: It depends, I suppose, on how you draft the legislation. If we look at the other Canadian jurisdictions, the typical expression that is used is, “On a question of public concern, a referendum may be held.” Those will change. Even though the legislation is stated that way and applicable to all governments, the view as to what kind of proposal ought to be put to a referendum will vary from government to government even with the same legislation in place.

Mr Phillips: I'm sorry, and maybe it's unfortunate you are the only spokesperson from the government, but the government has said that taxes will be part of this legislation. Who can tell us what other major policy initiatives will be part of this legislation?

The second question is, in your opening remarks you said that one thing that drove this was the special interests — and I'm paraphrasing again — having undue influence. Can you give us the examples the government used to reach that conclusion?

Mr Hélie: No, I'm afraid I'm unaware of any specific examples in that regard. In terms of who can answer the question as to the government's view of the kinds of questions that ought to be dealt with by referendum, as far as I know, there is no decision within the public service that's been passed on to us that we would understand to be specific examples. Therefore, I would say that at this time it remains in the hands of the elected officials.

Mr Phillips: But it is clear to you that where there's a tax or casinos, this legislation must require a binding referendum?

Mr Hélie: No, that's not clear to me. What's clear to me is that the government has gone on record as saying that it wishes to deal with tax increases and casino

gambling as being something subject to referenda. Whether the legislation will ultimately provide for that or whether that's simply how the government of the day will interpret the topic that is legislated, like whether it uses the expression “public concern,” I don't know.

1200

The Chair: By way of help, Mr Phillips, perhaps one of the government members would want to speak to that later on in this discussion to answer your questions.

Mr Bartolucci: You referred to one of the general principles, Michel, regarding referendum laws on the books now in Canada, that being held on any matter of public concern. Who defines that?

Mr Hélie: In the case of government-initiated referenda, the government gets the first crack at defining it and saying: “Here's a question we've put forward. We say it meets the requirements of the legislation.” In the case of citizen-initiated ones, obviously it would be the citizens who are putting it together. Citizen-initiated ones usually have to go through somebody like a chief electoral officer who determines whether the process is consistent with the law. So that person would then have a role to play.

In any case, at the end of the day, a person could always challenge in the courts and say: “Look, here's the referendum law. It says it has to be a question of public concern. This is obviously not a question of public concern, therefore the referendum is invalid under that statute.” So ultimately in our system it would be the judges who would decide, if push came to shove, on that specific question.

Mr Bartolucci: What you're saying then, Michel, is that there could be a nightmare in a definition of what a referendum should be: if in fact it is or is not a referendum.

Mr Hélie: You mean whether the referendum is validly held under the legislation or not?

Mr Bartolucci: Yes.

Mr Hélie: Again, it's a question of legislative drafting. I said that a number of jurisdictions use the expression “public concern.” Some actually have no limitation whatsoever. They just say “any question.” Whether courts would have any difficulty interpreting “public concern” is a question probably I would leave for the courts. I wouldn't have thought it would be terribly difficult to convince a court that if 10% of the electorate had signed a petition that something was a public concern, or if the government said something was a public concern, to be able to convince the courts of that, but one never knows with the courts.

Mr Bartolucci: Michel, you grew up in Sudbury.

Mr Hélie: Yes.

Mr Bartolucci: I know, because you grew up in Sudbury, you're aware of the value of a penny, you're aware of the value of a nickel, you're aware of the value of a dime. So certainly you're aware of the value of \$40 million. If you're looking at \$40 million a pop, what do you think the chances are, professionally now, of a citizen-initiated or citizen-thought-up initiative ever becoming a referendum? What's the likelihood of that?

Mr Hélie: My understanding is that in the United States, it's relatively popular. It does happen. In Canada, we've had very little experience with whether the elector-

ate is sufficiently politicized to engage in that kind of activity. Honestly, I would have no idea whether citizen-driven initiatives would become popular in Canada or not.

Mr Bartolucci: How would you define "mandatory referendum" and how would that fit into any matter of public concern in referendum legislation?

Mr Hélie: Sorry, could you express the question slightly differently?

Mr Bartolucci: Sure. How would you define "mandatory referendum," and how would that definition of "mandatory referendum" fit into the constitutional general principle that any matter of public concern be a part of referendum law?

Mr Hélie: I'm not sure that I'm picking up on the connection you're drawing between the two. Let me start with mandatory referenda. By that, I take it you're talking about what I might call "binding referenda." When I talk about municipalities, I say there are some times they have to have a referendum, so I call that a mandatory referendum, and sometimes they can choose to have a referendum.

A binding referendum would have to be laid out in the legislation. Are you asking the question, how would one bind the state, so to put it, to a referendum?

Mr Bartolucci: Yes.

Mr Hélie: There are many different ways. The options that I describe were certain ones. In constitutional terms, we would talk about legislation that is "binding in manner and form." That's the expression used in the jurisprudence, so that's what we would be doing. We would be drafting legislation that would say that in the future any legislation of this type, before it gets passed, has to be done in a certain way.

For instance, some jurisdictions require that legislation has to be enacted in both languages. That's not always a constitutional requirement; sometimes it's just a procedural requirement. One could make those kinds of restrictions, but a lot of the options that I describe could be seen as binding in that sense.

Mr Bartolucci: This is a lot more complicated than simply having a strong voice or a stronger voice. Correct? What we're doing here is much, much more complicated than simply asking Ontarians to express an opinion. Is that correct?

Mr Hélie: Certainly there are a number of factors that have to be taken into account, have to be thought about very carefully. I've mentioned some; the chief electoral officer went into quite a discussion. All of those have to be thought out very carefully before you propose a referendum.

Mr Wildman: Some of the questions I have I don't think it's fair to put to a public servant, so I'm looking forward to the supporters of the government party here to perhaps allow us to question them, Mr Chair, if that would be in order.

I would ask a couple of questions, though, related to the presentation you made. You did say that any referendum legislation would have to be constitutional, obviously, and would have to take into account the Charter of Rights and Freedoms in particular. Since a referendum is a request for an expression of majority view, how do we

ensure the protection of minority rights? This is a central question. How do we ensure that, for instance, aboriginal rights, to use an example, would be protected, and that we would not have a situation where the majority would trample on not just individual rights but the collective rights of a minority?

Mr Hélie: That's the same problem that faces legislatures, governments as a whole. When I talk about the New Zealand example, that was the very problem that they were concerned about and why they were thinking of putting in a bill of rights.

In Canada we've solved at least some of that problem by constitutionally entrenching minority rights in the Canadian Charter of Rights and Freedoms, as well as certain legal rights, as well as aboriginal rights.

Mr Wildman: That's why I asked about collective rights as opposed to individual rights.

Mr Hélie: Well, the Canadian Charter of Rights and Freedoms entrenches certain collective rights. There are minority language education rights, there are language rights that are collective rights, and aboriginal. Those are all collective rights that are enshrined in the charter — well, some of them are enshrined in the charter and some are enshrined in the Constitution Act, 1982.

Mr Wildman: I don't want to get too technical here. I understand you're attempting to fairly answer my question. I specifically used aboriginal rights for a reason, in that up to now it has been a question, a constitutional and legal question, as to whether or not aboriginal self-government is enshrined. So it is conceivable, hypothetically, that there might be a vote on whether or not the Ontario government should participate in the negotiation and ratification of aboriginal self-government as it relates to Ontario's responsibilities under the constitution. You would have the majority in the province perhaps expressing a view on the "collective right of self-government" of aboriginal people.

1210

Mr Hélie: The Legislature and the executive, in certain cases, currently already have to make those kinds of decisions, and if they're wrong, the courts can rectify it.

Mr Wildman: That's quite correct, so we are then not resolving a problem in that sense through referendum legislation. We're left in the same boat we're in right now, in that the Legislature or Parliament in Canada could pass self-government legislation — that is, enabling legislation to allow for aboriginal self-government — which could conceivably be challenged in the courts and go all the way to the Supreme Court of Canada and the courts would make the final decision. So you're not changing that by bringing in referendum legislation and enabling the public to express a view which could be binding and be different from the situation now where legislatures could pass legislation.

Mr Hélie: That's right. It obtains the view of the public on a particular question, but it doesn't answer the question as to whether the state as a whole — that is, the public or the government or the executive of the government — is entitled to do a particular thing or not. In our system of government, that will always be controlled by the Constitution.

Mr Wildman: I have one other matter — two, actually, which follow from our discussion. I want to say, Mr Chair, that I am very concerned about how we deal with minority rights in this situation. I used the example of aboriginals, but you could use other visible minorities, or whatever.

The other one is on the matter of fundamental questions, and I take what you've said, that you don't know what the government might consider fundamental questions, other than what has been stated by members of the government about tax increases or casinos. But isn't it the case that Ontario Hydro was in fact formed by referendum?

Mr Hélie: I don't know. I'm sure you know —

Mr Wildman: It would be interesting if we could get that information, because my information is that when Sir Adam Beck moved forward with the initiative of bringing together a lot of private companies into the public sector and setting up what has become one of the largest companies in the world and certainly the largest public concern in this province, there was a province-wide referendum.

Mr Hélie: I can certainly find out for you.

Mr Wildman: It might then be an interesting question. Obviously the Conservative government at that time considered it to be a significant policy issue that led it to have a referendum. So if you were going to now reverse that, that indeed would be a significant policy issue and might indeed require another referendum — if we're going to privatize, in other words.

The other question was, you mentioned tax increases as one of the matters that have been pointed to by members of the government. It might be interesting to ascertain — and I hope the government members, members of the party that support the government, will be able to explain to us if tax increases are significant enough, as we all believe they are, that cuts in services might also be, and so whether cuts in government services of one type or another might also be matters that should be subject to referenda, and if so, which ones and what size of cuts.

Mr Hastings: A question to our representative from the constitutional law branch of the Attorney General's ministry: In your research of this whole topic and in your assistance in developing the document for our consideration before the committee, can you tell us the number of states or provinces that have limited the types of questions on public policy matters that would be subject to any type of plebiscite or referendum?

Mr Hélie: You mean more specific than something of public concern?

Mr Hastings: Right.

Mr Hélie: I don't know of any.

Mr Hastings: From a citizen-initiated side of this question, are there any limitations that governments have imposed on the types of public policy issues that are subject to referenda?

Mr Hélie: Again, I'm not as familiar as I might be with the American examples, so I could check into that. I mentioned the New Zealand one, which was not limited and on which there was some discussion that maybe it

ought to be. But I could get back to the committee with respect to American states.

Mr Hastings: Okay. That would be much appreciated.

Mr Clement: On page 4 of the discussion paper, at the top, it says, "For many years Mike Harris has said that certain questions of public policy — such as those related to constitutional amendments," and there's a footnote which quotes Mr Harris from both 1990 and 1992, "the expansion of casino gambling in the province, and new provincial taxes — are so fundamental that they should be decided using referenda."

Does that fairly encapsulate your understanding of what the government position has been to date on referendums?

Mr Hélie: Yes, that's correct.

Mr Clement: Perhaps that answers my friend Mr Phillips's concerns about where the government is coming from on this to date.

Mr Phillips: So that's it?

Mr Silipo: That's it? Is that the policy position?

Mr Clement: We want input. That's where we've been to date, but we want further input.

I wanted to talk a little bit about the issue of complexity which has come up, I suppose, by my friends' comments. This is a complex discussion that we are having, and yet you have been citing examples from Canada, from the United States of America, from Australia and New Zealand and from many countries in Europe that either have had experience with referendums or have had specific legislation in place to deal with referendums. From your knowledge of the area, what are some of the pitfalls that these jurisdictions have faced in terms of referendums gone awry, if you will? Is it so complex that there have been a lot of catastrophes that have occurred, or is it something that these jurisdictions have dealt with fairly reasonably, from your understanding?

Mr Hélie: I must say that I don't know of any significant pitfalls, but I must also add that, as a constitutional lawyer, I haven't really studied what is done on the ground in most jurisdictions very deeply. I've only taken a rather brief look at what the rules of the game are in these jurisdictions, rather than actually looking into any depth as to what the political fallout has been.

Mr Clement: Maybe that's a question we can discuss with other representatives as they come forward to this committee.

Finally, I want to ask a couple of questions as well to follow up from Mr Wildman on protection of minority rights, as he coined it. This led us into a bit of a discussion with Mr Wildman, I believe, regarding the role of the courts in this, that somehow the role of the courts would detract from the will of the people or would confuse the issue. I gather, and I just wanted your confirmation of this, that what you're saying is whatever gets passed has to be within the bounds of the law. Whatever we do as a government or as individuals, we have to operate within the law, and that is the role of the courts, to review whether a particular action by an individual or by a government is within the law. Is that your understanding of the role of the courts in reviewing results of referendums?

Mr Hélie: That's right. The Constitution sets the most fundamental, the basic values of a society as to how government ought to operate and the Constitution specifies — in a sense, it's like a frame — what cannot be done outside the frame. It leaves it then to the electoral machinery or the democratic process to make decisions within the frame. So that exists whether we have a referendum or not. In both cases, the Constitution will always impose that frame that says you can't violate what we consider to be fundamental values.

1220

Mr Clement: I'd like to just follow up on something else Mr Wildman raised. It stems from the discussion about minority rights, because that is obviously a very critical area when we are discussing the use of referendums and perhaps the overuse of referendums in certain circumstances.

It struck me that I certainly remember in past legislatures, but I will confine myself to the current Legislature, that there have been times where all three political parties have been in absolute concurrence on a particular bill. I'm reminded of the changes to MPP remuneration and pension plans as being one particular occurrence.

I'm not trying to be specious on this, but I also recall an editorial in the *Toronto Star* where they castigated us for doing this. I think their understanding was that MPPs should be paid more. This is obviously the worst example I can use, but it's one that comes to mind. There might have been a point of view that in fact MPPs should have been paid more that was not adequately represented in the Legislature because of the concurrence of all three political parties.

I guess I wanted your reaction to this. Is this another example — not the MPP compensation, which I don't want to talk about any more, but let's take the general example where all three political parties agree. Because we are all politicians, these are reasons that are political as well as having moral dimensions and public policy dimensions. Is that not another argument in terms of protection of minority rights? Maybe I'm expanding the term a bit, but there are also minority opinions. As well as visible minorities or status of minorities in our province, there are also minority opinions. Could one conclude that citizen-initiated referendums is perhaps a way to protect minority opinions, given the occurrence that occasionally happens where all political parties in the Legislature agree on a particular public policy issue?

Mr Hélie: Yes. If you had a citizen-initiated proposal which required, say, 10% of the electorate to bring something forward, if it were on an issue which the three political parties were agreed ought to go in one direction and there were a group of people who felt otherwise, if they were 10% of the electorate, they could get together and bring it forward that way.

Mr Wildman: But it could probably be defeated by the majority.

Mr Clement: At least they get a shot at it.

Mr Hélie: It depends on whether the three parties adequately represent the wishes of the vast majority of people on that particular issue.

Mr Wildman: A far better example is, all three parties agreed with the Charlottetown accord. There was a referendum held in Ontario, and in Ontario it carried.

Mr Carl DeFaria (Mississauga East): Michel, you mentioned that there are some kinds of binding referenda that would require constitutional amendment. Could you just expand on that? What kind of referenda would require such an amendment?

Mr Hélie: An option whereby the role of the Legislature is bypassed. So an option by which the electorate could, through a petition and then a vote, actually pass legislation that wouldn't have to go through the House at all, where you would not be entitled to vote on it, would be such an example, because under our system of government, the Legislature must have a role.

Mr Wildman: What do you think Edmund Burke would think of that?

Mr Hélie: He would not like it.

Mr DeFaria: What if the question had been voted on at the Legislature before it's put to a referendum?

Mr Hélie: If the Legislature proposes a particular bill and says, "We want this bill to have effect only if the people vote in favour of it at a referendum," then you haven't bypassed the Legislature. So while people might still raise questions and say you've not circumvented entirely but you've added something to the process, in our view, it would be constitutionally valid.

Mr DeFaria: Just one other question. Was there any referenda legislation in any of the provinces in Canada that required constitutional amendment?

Mr Hélie: I haven't studied the other provinces — well, maybe I can do it right now. They were of the view that they didn't require it, I assume, in passing it. Most don't bind the government, in which case it wouldn't seem to raise much of an issue at all. The few that bind seem to go no further than to bind the government to introduce the legislation. That's what both Saskatchewan and BC do. When they say they're binding the government, they're just telling the executive to introduce legislation. So while arguments can be made that you shouldn't be able to tell any member of the Legislature, including the executive, what to do in the House, probably that would not succeed in a constitutional challenge.

Mr Phillips: In some respects we have to ask the government our questions through you, so I'll ask you the question and maybe the government will choose — I think a fairly important point is one on page 4 of the paper that says the government has defined the fundamental public policy as constitutional amendments, casino gambling and new provincial taxes. I think the government has committed publicly to legislation that binds it to a referendum on taxes. Therefore, in the end, I guess the legislation is going to have to define fundamental public policy issues. Can you help us at all in what other fundamental public policy issues the government has in mind and how we are going to define the list of fundamental public policy that requires a binding referendum?

Mr Hélie: Obviously the only answer I would give is the one that I gave earlier, which is that each government will probably have a different interpretation of what ought to go to a referendum. Your real question is, what does this government —

Mr Phillips: No. The government has said that the legislation will define — I think it said that — not that it will allow a referendum and it will make its own deci-

sions on when a referendum is. It has said, I think, if this taxpayers' pledge means what it says, and it won't be just that, "We'll hold a referendum when we're going to take taxes up." So my question is, what other things are we going to have to put in this list that will require a binding referendum?

Mr Hélie: I will have to leave that to the government members to answer, because I certainly don't know that that is the government's view.

The Chair: Thank you very much, M. Hélie, for your presentation. It's been very helpful to the committee.

The committee stands in recess until 2 o'clock.

The committee recessed from 1228 to 1403.

The Chair: The first item of business is just procedural or housekeeping. The clerk has distributed a revised copy of tomorrow morning's schedule, and committee members will note the change of venue to a different room in the Whitney Block tomorrow afternoon for our videoconferencing. I would ask members to disregard the former schedule they had.

PATRICK BOYER

The Chair: We have with us Mr Patrick Boyer, who is considered to be very knowledgeable about the referendum idea and issue. He's here today representing the University of Toronto law department. Welcome, Mr Boyer. Thank you very much for coming in. We look forward to your presentation.

Mr Patrick Boyer: Thank you very much, Mr Chairman and honourable members of the committee. It's a pleasure to appear before you. I want to thank you for this opportunity.

I don't know what else this committee is going to be charged with over the course of this Legislature, but without even knowing that I can say that this subject matter is unquestionably the most important that you'll be dealing with because what we're addressing here is a concept that relates to the whole political functioning of Ontario, the system of representation, the workings of the Legislature and the ways in which a mature democracy can work.

As I read the paper that has been distributed by or on behalf of the government, it seems very clear that there is an intention within the government to bring forward legislation. I think that's important because Ontario, often thought of as a "have" province, is most certainly a "have-not" province when it comes to the basic infrastructure of direct democracy.

It is a subject that I have a strong personal interest in. Apart from writing three or four books on it, when I was parliamentary secretary at External Affairs I led the Canadian delegation of observers to the referendum in Ukraine on Ukrainian independence. At the national level I worked long and hard to have referendum legislation in place so that the question of constitutional amendments in this country would be a process that would involve the people who had to live under that Constitution with making the verdict about it, rather than having it simply decided without their participation and consent.

At the provincial level I, among other things, was retained by Premier Ghiz of Prince Edward Island at the time of the fixed-link crossing plebiscite in PEI.

There's been a lot of involvement on my part, so you understand why I'm so happy to have a chance to come and, even in an hour or so, speak with you about it.

In case you wonder why I have this interest, it is a genetic condition. My great-grandfather James Boyer, who was clerk of the town of Bracebridge, which is in Mr Grimm's constituency of Muskoka-Georgian Bay, over a century ago in the 1880s presided over and conducted a referendum within the town on the issue of whether the municipality should expropriate, acquire, bring under the town the local power generating system that was owned by a power mill operator. So long before Ontario Hydro and the election of 1905 — not a referendum but a general election — saw this happening at the provincial level, here in the town of Bracebridge we had the example of the first government-owned power system in the country, and it was done on a verdict rendered by the people in a referendum. This enabled the people of Bracebridge to receive electrical power on the basis of power to the people. It's a genetic condition I suffer from.

There are a lot of things I would like to say, Mr Chairman, to you and the members of the committee on a philosophical level about this subject of referendums and their role in a representative democracy, also the political dimensions of this process, and certainly the practical component. I think perhaps the best way to proceed is if I could initially just distribute to you some of the efforts of my past years of research and writing. I have brought, for example, for each member of the committee — and perhaps the clerk or the clerk's staff could help — a copy of *The People's Mandate*. This is just a donation to the committee. Actually, there's a sequel to that book called *Direct Democracy in Canada: The History and Future of Referendums*. I have to go back to buy some more of those from the publisher. Similarly, I brought in copies of an earlier book that I wrote called *Lawmaking by the People*. I think that's the only one I have available.

1410

There was some discussion about statements in the government's document about the mood in the country and is there a need to rescue representative democracy and democracy generally from special-interest groups and the rest of it. At the time of the national leadership race for the party I was participating in at that time, I wrote a book, called *Hands-On Democracy*, that discusses the context of these initiatives. I have copies of that également en français pour M. Beaubien, M. Morin et mes autres collègues qui parlent français —

Interjection : Et M. Silipo.

M. Boyer : — intitulé *La démocratie pour tous*. C'est pour tous les députés.

Interjection : It's like Christmas.

Mr Clement: I think we ought to go to the commissioner at the end of this.

Mr Phillips: It's got to be over \$200.

Mr Boyer: I was getting concerned that I only had about an hour or so, so I figured if I gave it to you in this form, then it didn't matter if we weren't together for very long.

Finally, I brought something that I wrote when I was a member of Parliament but I think is perhaps helpful to the committee just to place this issue in the context of the evolution of Canadian political thought. It's called Democratic Conservatism, *et en français c'est Vers un conservatisme démocratique*. I have copies of both of those, not because I'm here to pamphleteer, but simply because I think some of these questions that were being asked by Mr Wildman, for example — if, in 1905, the Conservative government had a mandate to “public-ize” or nationalize the large power companies at Niagara Falls, is it an appropriate thing now in the privatization to go back to the people on those same issues, even though that was an election, not a referendum, in 1905?

I think these initiatives we're seeing now can perhaps be better understood emanating from a Progressive Conservative government in the province of Ontario viewed in the context of this book, which traces the evolution of Canadian political conservatism. It's, again, more of a historical appraisal than anything else.

Mr Wildman: Just on a matter of clarification, Mr Chair: When I made reference to referenda regarding Ontario Hydro, it was the stage before your great-grandfather was a party to; that is, municipalities across the province held referenda to bring into the public sector a number of utilities. When that began happening, the Conservative government of Sir Adam Beck became involved in looking at how to deal with it on a province-wide basis. You're right: In 1905, it was an election, not a referendum.

Mr Boyer: I also have just one copy of *Démocratie et référendum : la procédure référendaire*. This is from a colloquium at the Université de Montréal that I participated in and these are the published versions of that. It includes my presentation in that. But I only have the one copy, so if there's an interest, I could leave that for the clerk.

I do have a copy of my private member's bill from the House of Commons, the Canada Referendum and Plebiscite Act, which will be germane to some of the things that we can touch on. It took me till midnight to find this. When your political career is suddenly terminated, you find that a lot of your documents, in my case 184 boxes, end up sitting in the National Archives of Canada and you can't quite immediately bring to hand everything you'd want to. So a gradual exit from public life has a lot to commend it, and certainly nothing as abrupt as recall.

So with that material, I've put in your hands the results of a lot of my research relating to direct democracy in our country. I know that there are many comparisons made with other jurisdictions, and I'll be happy to do that as well, but I think we have the entire story here within our own country, all the examples. This country does have a strong tradition of involving people in decisions where they're going to have to live with the consequences of them.

Many people state to you that this is inimical with the parliamentary system, with the pattern of Westminster and so on, and yet some of the finest and most acute constitutional thinkers in Great Britain favoured the use of referendums. I speak, for example, of that eminent constitutional jurist A.V. Dicey. Among the other parlia-

mentarians, people like Disraeli were very strong exponents of the need to get a specific mandate for major issues of transformation.

Within our own country, prime ministers such as Sir Wilfrid Laurier, Arthur Meighen, Mackenzie King, Brian Mulroney, Jean Chrétien, have all grappled with and addressed this use of referendums within our system. Particularly Wilfrid Laurier and William Lyon Mackenzie King had the most profound understanding of the appropriate uses of this instrument in resolving difficult issues that bedevilled the nation, in having people share in the process of coming to a public reconciliation over what was at issue.

When you look at our Canadian history, it's a history of Liberal governments and of Conservative governments bringing these measures forward. So when people today say, “This is something you hear coming from the Reform Party,” or that it sounds like it's otherwise out of left field or right field, this is not consistent with our political history. This is something that mainstream Canadian political tradition has embraced, and certainly the political culture of Ontario is replete with examples.

The people of Ontario have voted in four province-wide plebiscites, the people of Ontario have voted in three national referendums and, at the municipal level, in thousands and thousands of plebiscite ballot questions and binding referendums. I'll go through with you some of the Ontario legislation that creates this right that Ontarians today enjoy at the municipal level and how it's enshrined and gives rights in some instances for initiatives, certainly, and in other cases for referendum and plebiscite questions.

I'm in a little difficulty to know how to proceed. I thought the fastest, most efficient way might simply be to go to the discussion paper, which concludes with two or three pages of questions, and because time is quite compressed, address those questions and give an answer that I would recommend for your consideration, with or without an explanation. As I do it, perhaps points that you would want to come back to we could then go into in greater detail.

On page 41 of the discussion document: “Should referenda be permitted on a broad and unrestricted range of public policy issues, or should they be restricted to particular issues and topics; or prohibited from covering certain issues or topics, eg, administrative or regulatory matters?” I do not think this device, as Mr Bartolucci said, at the cost of many millions of dollars for each direct voting occurring, would pertain to administrative or regulatory matters. I think the citizens ought to be called upon to share in public direction and decision-making when it is a matter of transcending importance for the province, something that will significantly alter the way Ontario is or is going to proceed.

Certainly, as the Right Honourable Arthur Meighen, a former Prime Minister, wrote in 1937, 98% of the matters coming before the Legislature or the House of Commons are matters that ought to be dealt with day in, day out by the elected representatives who are there, who are accountable, who are to inform themselves of these issues and vote on them. The last thing I'm advocating is that we have three referendums before breakfast every day. I

think it's a very specialized device. I see it not in almost mystical terms but as something that is as profoundly important for a democracy as a general election; therefore, it ought not to be trivialized and it should be used on those special occasions when there is an issue of, as I say, transcending provincial importance.

1420

As to restricting to particular issues or topics, I would say not. I think you would want to see for our province a general enabling statute that would permit direct votes to happen according to agreed-upon rules that are set down neutrally and clearly in advance. It may be something of a self-defeating enterprise to get into the procedure in the abstract of saying, "These are topics we will never have a direct vote on and these are ones that we always must go to the people on." To try and draw a line in 1996 between those two categories doesn't serve the people of this province well, or any government or any Legislature or any people who might come forward with initiatives.

The bill I had in the House of Commons really talked about any public consultation being on a matter of "pre-eminent national significance" or words to that effect. But you get the idea, that it's got to be up there, certainly not at the administrative or regulatory level.

The Canadian Referendum Act at the moment is limited to simply constitutional questions, but of course in Canada, where everyone is an expert on la Constitution ; nous sommes tous des experts et presque toutes les questions sont d'une dimension constitutionnelle, alors, we've seen very wide definitions of what's constitutional in Canada, so maybe some things that in other countries would never get to a national referendum could, under the rubric of being constitutional questions at the national level in this country. But I think it should be otherwise open to whatever the public agenda of the province at a particular time brings forward.

There are issues that are now forefront in your consideration as members of the Ontario Legislature that were not issues that confronted my father when he was a member of this Legislature from 1955 to 1971. Times change and the issues change. If Ontario is to have on the statute books generally enabling legislation, it should be that: It should enable whatever comes along as an issue and not have it frozen as a snapshot in time.

When we refer to having general enabling legislation on the books, this is exactly the same as we have in the Election Act of Ontario. It's there, it sets out all the rules as to who can be candidates and how you qualify, who the voters are, the procedures and so forth. It sits there and it's not used except when it's time to have elections. But when it is time to have elections — and sometimes they occur more rapidly or unexpectedly than might have been anticipated — there's no debate or discussion about the procedure; it's already been deliberately thought through, carefully reflected on and enacted.

I think all that's being proposed here, or what I would certainly want to see for our province, is the same kind of thing for direct voting, that in this calm period now you can deliberate on what the key elements should be in a referendum act and what would be fair and how you deal with the question and the threshold numbers for

initiating petitions, all of that, so it can be used as and when the historic moment requires it.

We've unfortunately had more of a pattern, in Ontario and at the national level, of waiting until that boiling point was reached with some issue, whether it was conscription for military service in the middle of the war or, at the 11th hour in the 59th minute, dealing with fundamental constitutional change, and we decide: "Oh, by the way, we can't do it. We don't have any legislation in place. We'd better pass some." If you bring a bill like that before the House of Commons or before the Ontario Legislature, as the case may be, it is necessarily infused with all the controversy of that issue.

And these are always controversial issues. You don't go to the people with matters about the size of road signs. You go to the people with issues about the prohibition of alcohol in our society. You go to the people with issues about, shall we make these fundamental changes in our Constitution? Shall we conscript people and put them into uniform and send them overseas to die for Canada in time of war? These are the issues.

And so it behooves us to have in place, as most other provinces do, legislation that's there to call upon when the time arises.

Under this first question on page 41, there's a further part. "Should citizens have the right to petition for a referendum on a particular question, including the recall of their MPP?" With respect, I don't understand for the life of me why the question of recall has been introduced into this discussion paper. It is really pretty much of a red herring in this context. If there were to be proposals relating to recall, I think they would come more appropriately under the Election Act. Recall really has to do about de-electing members of the Legislature; this is when you get the big hook, a specialized, personalized big hook. I mean, I was recalled at the last general election but that was according to generally accepted electoral procedures.

It's not that I'm fundamentally opposed to the concept of recall, but if I think of 25 reforms we could make to the Legislature and to our national Parliament in Ottawa to reinvest it with relevance and to get accountability back in the Legislature and control over spending and the formulation of public opinion and to have legislators rather than lobbyists in the driver's seat on many of these issues — there's a long list, 20, maybe 30, issues I would put as being far more fundamental before we would get to the question of recall. I think extracting one MPP from the Legislature because he or she has not done something the way you thought in your riding that he or she should and then sending somebody else back in without changing anything else in the Legislature, like the way the party influence goes on votes, the use of the whip and so on, is a bit like saying, "That actress, we'll yank her, but we'll send another actress back in, and we'll leave the same script, we'll leave the same stage set and we won't change anything else."

With respect, I think you can bypass recall as being at all relevant to this issue of involving citizens in decision-making of public policy direction for the province.

The next question: "Who should decide whether a referendum will be held? Should Ontarians be able to

place their own initiatives on the ballot?" My answer would be yes. I think there should be provisions included for initiatives by citizens to bring issues on to the agenda.

"Should the government, acting through the cabinet, decide?" Yes, the government should be involved. "Should the Legislature be involved?" Most assuredly.

Let's just pause here for a minute. This is often referred to as direct democracy, and the reasons for that are largely historic, yet the way the Swiss constitutional lawyers refer to this process is actually "semidirect democracy."

Mr Wildman: Because all the citizens pass it.

Mr Boyer: Yes, or the example we heard from the constitutional affairs lawyer from the ministry of justice before noon, this almost hypothetical case — it's certainly a non-starter — where there would be something that would be voted on, become law and utterly bypass the Legislature. I guess it's one of the scenarios in the discussion paper. That was either late at night or somebody was smoking heavily when they were writing that. That's not on for what's going to happen in this province.

What is on is what you could call semidirect democracy, where the Legislature is as involved in the process as everybody else. Take, for example, our last national referendum on the Charlottetown accord in October 1992. The legislation under which that took place, all the rules for the voting, the game, who could say what, how much air time was going to be allocated, whether there were spending limits, all those rules were set out by Parliament. We passed legislation in Parliament that set out the framework for it.

1430

Then, secondly, there was the campaign. Many of us participated in it, as many of you will when there's a provincial direct vote, because you really can't sidestep it, although to an extent this is a time not to be partisan. That was one of the big mistakes in the 1992 national referendum. Then, whatever the outcome is, Parliament or the Legislature has to implement it. If in 1992 Canadians had given the green light to the Charlottetown accord, we would have had to have been busy in Parliament enacting various provisions amending the Constitution. You would've been voting on them here at Queen's Park. You can see, throughout the piece this is a shared endeavour of the elected representatives and the people to facilitate occasional direct voting in a way that allows us all to be participants in the process.

When you get people showing their tonsils as they yell at you about how bad this is for our system of government: "We elected you to make the decisions. Don't bother us with anything" — I love it when people say that. I say: "You elected your representative to Queen's Park to make your decisions, you've got your minister or your rabbi to look after your soul, you've got your doctor to look after your health, and you don't have to do anything, right?"

It's not a very mature view of democracy in Ontario in the 1990s to say that all a citizen has to do is, once every four or five years, vote on one ballot to elect a representative and then that's it. I think Ontarians are more entitled to participate, and that's what this process is no doubt aimed at accomplishing.

In answer to that second question, it's yes all the way through the piece.

"Should a referendum be mandatory in some circumstances?" Yes, in some circumstances. We have that in the municipal laws within this province now, if there's a certain outcome with respect to fluoridation of the water supply, with respect to voting a municipality dry or wet under the liquor laws, also with respect to other questions about public franchises, some of these things Mr Wildman was referring to in the public domain. Yes, there are cases where the results should be mandatory. I'll show you later how I set up a regime for doing that in my own bill that I had in Parliament.

"Should a referendum be held in conjunction with a provincial or municipal election?" No. When we have general elections, they are an all-out, all-in, totally inclusive enterprise, and everything is being considered. Simultaneously to have a discrete question at the side and say, "We're talking about all these other issues, about the transportation system and the school system and about taxes and about enforcement of conditions in the provincial penitentiaries, but over here this one question about hospitals, that's separate" — I just don't think you can go into an election and have one or two watertight compartments: one, the big one that's got all the issues in it, and then a separate one. Necessarily they would interflow.

The reason for that is of course the reason the referendum device has been invented at all. It's because every now and then it is important to get focused, specific public attention on one transcending issue. All of you are experts at how election campaigns involve everything: They involve your party's past history, they involve the question of your party's leader, they involve your program for the future, they involve your personal track record in your constituency, and on and on and on. So much gets mixed up into that that it's very difficult sometimes to extract from the outcome a clear mandate to do one thing.

That's why in the book *The People's Mandate*, I've actually devoted a whole chapter, which you can read at your leisure, called, "Mandate, Mandate — Who's Got the Mandate?" There's a lot of discussion there about this constitutional fiction we live by that governments elected with a majority have got a mandate to do whatever they want for four or five years. And it is a fiction. We live with it because it's convenient. It actually makes things work to a tolerable degree, as long as it's not pushed too far and as long as a government doesn't come and all of a sudden start to do something it never campaigned on. For example — well, there's lots of examples. I'd better let that go. We all know of too many examples.

I think there's a real distinction between general elections and the specific voting in referendums. They're different tools. If I should be so lucky as to get the contract to repaint this room some day, there are places where I would use the rollerbrush — I can see those places — and then there are other places with little, very detailed work where I'd have to go with a very fine brush.

That's the same with these devices. The general election is the broad roller and it's hard to use it for the one specific issue. You put it in the campaign platform of

the party, but it's in there with a lot of other things, and were they really voting for free trade or were they also voting for something about helicopters or were they voting for something about medicare or something about the environment?

When there's that specific thing you have to do, that precise piece of work, you don't use the rollerbrush to paint the fine bits of wood around the window-pane and you don't use the rollerbrush when there's one question that is going to be transcending in our history in the province. That's the opportunity for this unique device of the referendum.

Also in there it says, "In the case of an initiative" initiated by citizens "should there be a requirement to hold a vote within a specified amount of time?" Yes, I think there should. We had examples of that in some Ontario statutes that require certain matters, for example under the Fluoridation Act, to be dealt with on a timely basis once the vote has been concluded.

"Does the experience of other jurisdictions show that campaign spending or advertising affects the outcome of referenda? What lessons can Ontario learn from these? Are rules necessary?" Free speech and spending?

Big topic. It was asked about earlier this morning. I've written a lot — actually in this book, *Money and Message*, which deals with elections, advertising, broadcasting and campaigning and about raising and spending money, I looked at the evolution of the spending rules we have in Ontario and nationally. The motivation for that was to say: "In Canada we will not have our political life be a rich person's game. We want to have a fair opportunity for everybody in the public arena, so we'll put some spending limits on it, and we'll also have disclosure of who is giving so that's part of the public record."

In contrast to the United States, we are so far ahead and their system is so mired in a system that is beyond redemption that we can be very happy that we proceeded when we did in the way we did and that we had the political muscle to get these measures through.

For quite some time and when this issue came up when I was in Parliament, I always favoured spending limits. I guess there are stages in life where we have to re-evaluate and rethink, so I'm looking now at the outcome a lot of votes. In fact, the discussion paper does mention that there's not this correlation in Canadian politics between the level of spending and outcome. I mean, look at the last federal election. The Tory party did spend quite a bit of money — Isabel Bassett might know exactly the amount; nobody else could even see how much; it was an astronomic amount — and we got out of that two seats. So there's this bizarre correlation. The discussion paper also refers to the 1992 national referendum where spending did not produce results. And we certainly have seen that in nominating conventions within parties and leadership conventions and so on.

1440

The political science literature, particularly from the United States, that has looked at jurisdictions like Washington and Oregon where they don't have as many referendums as they do in California but it's a constant element, is well balanced in their political culture in those

northwest states — it's really like elections. The correlations are not ones you can make.

Someone was asking this morning, is it easier to get an answer no than an answer yes? On a lot of questions the populations vote for what is going to cost them more, is going to impose more obligation on them, if they've been persuaded that there's a higher public benefit, like seatbelts. In some of these western US states, there were groups saying: "Don't force us to buckle up, because this infringes our fundamental liberty to be Americans. We've got to be able to ride around free and crash through the windshield and all the rest of it." When they voted on that, when these lobbying efforts to get this as a state ballot question came forward, the people voted for it and said: "Yes. It makes sense. We've seen the numbers. They reduce accidents and injuries by 82% across the board and it will reduce the health care charges. So yes, we vote for it."

The correlations both on the issues and the spending are very hard to draw. I would recommend that for the first go-round a new referendum act in Ontario might not include any spending limits.

I also say that fortified by the recent court decisions. In western Canada, the National Citizens' Coalition has consistently challenged these provisions back when it was section 70.1 of the Canada Elections Act with the spending ceilings, and since, usually with success. As long as we have spending limits and as long as we have freedom of speech, there's going to be this line between them.

That's what all this legislation is. It's under the Ontario Election Finances Act. It's all about where that line gets drawn between freedom of expression and the right to put your money where you want. As long as we're doing that, there's going to be controversy. There will be debate about whether that line should be further this way and allow more spending but curtail more freedom of speech, or come this way. You will always have a lot of heat around that issue because it's a fundamental one.

There are two challenges coming out of the last British Columbia provincial election, one involving the National Citizens' Coalition and one the Canadian Taxpayers Federation, who like to challenge these issues on the basis of freedom of expression.

But I think it may be worth the effort — you see, the effort in the national Referendum Act was a real sham. The government purported to have spending limits but in fact had none, because it said there was this limit of \$5,000 a committee but there was no limit to the number of committees that could be set up. So it was a distinction without a difference, and I think that was only because the government was spooked by lawyers in the Department of Justice who always try and second-guess Parliament, always try and second-guess the courts, always try and second-guess the Canadian people in terms of interpreting the Charter of Rights and Freedoms.

So a government that came late in the day to bringing in referendum legislation — this is the point I was making 20 minutes ago. If you do it when you've got the time to think it through, you're not going to be stampered or rushed at the last minute. But the Mulroney government didn't want, going into this referendum at the last minute, to be facing a court challenge over here as to

whether the legislation was actually valid. Instead of fighting that battle and winning it and having Parliament pronounce on it and say, "Yes, courts, that's the decision of the Parliament of Canada as to where the line is going to be drawn," it fudged the issue and withdrew from the battle.

Again, we could keep talking about that at great length, but there are many more questions on this shopping list.

Mr Phillips: What is our time, by the way, Mr Chair?

The Chair: We set aside two hours for this part of our discussion.

Mr Boyer: Should a win be defined as a majority of all voters who turned out to vote or should some other threshold prevail? Are there any circumstances where a double majority would be required?

I think that in our democratic system we have taken simple majority to be the standard, 50% plus one. Even on matters of the last two referendums in Quebec on something as transforming and fundamental as that, it was 50% plus one.

The only place in Canada where we've seen it currently higher is in Ontario, some of the liquor legislation, at 60%, but the interest there is avoiding the flip-flop, that you can be having a community that's equally divided so it's sort of dry this six months and then wet for the next six months, as quickly as they can bring on votes. That actually happened. When someone writes the comic history of Canada, there are great places, especially in Atlantic Canada where this whole issue was back and forth like that. So the legislators in their wisdom said, "Well, let's just raise it to 60% so that it's going to be a little clearer and we'll hold either wet or dry for a longer period."

As to a double majority, it's possible to do that, but I think that invites a lot of difficulties. It seems from this discussion paper that we're talking about a majority of the province and a majority of a particular community within the province. It may be that the authors of this were envisaging an issue that had a regional or a fairly local salience to it. If that's the case, then the vote could just be held in that region. There may be some issues that affect northern Ontario, say all the districts, when we get out of the counties and into the districts, so north of the French River. You could see a northern Ontario vote on a certain question.

In Quebec, this was done under the Referendum Act of Quebec dealing with the constitutional form of government for the aboriginal peoples on the North Shore. It involved just the northern part.

Another way of dividing this, and this has happened within our province here, is not geographically, that you would take like the Niagara Peninsula on some issue about the tradeoff between farm land and development of that land or other issues like that, but you do it sectorally. For example, under the Farm Products Marketing Act of Ontario, there's a possibility for plebiscites there to be held by producers. We've had them for peach producers, asparagus producers, where province-wide anybody who comes within that definition is entitled to vote. You have not only geographic possibilities but sectoral possibilities.

"How should we ensure compliance with the wishes of people as expressed through the result?" Implement them. Yes, I don't know what else that question's asking.

"What are the constitutional and legal implications of your preferred options for referenda, including initiatives? How should they be addressed and resolved?"

The constitutional implications — with great respect to whoever were the authors of the discussion paper that's been distributed, I find it to be an extraordinarily thin document when it comes to assessing the constitutional aspect of direct voting in Ontario. There are virtually no constitutional implications. This borders on being another red herring, but of a very different kind.

1450

As to the statement before that law in this area is unclear in Canada, my reading is that it's extraordinarily clear and it came out of the 1919 decision where the Manitoba Initiative and Referendum Act went all the way to the judicial committee of the Privy Council, the highest court of appeal for Canada at that time. The objection that was taken to that direct legislation act of Manitoba was that on the terms of its operation, once a piece of legislation had been approved by the voters, then the Legislature had to enact it. People who didn't like direct democracy challenged this, and the ground they challenged it on was as narrow and precise as you could ever hope to find. It was that the legislative process requires, after the three readings in the Legislature, the Lieutenant Governor to give royal assent. By requiring that a law be enacted, this was seen to impede the freedom of the Lieutenant Governor exercising the royal prerogative to give or withhold consent — royal assent, rather — to the legislation. So on the basis that each province in Confederation is entitled — not by the sections that are referred to in this discussion paper — to amend its own constitution, this is something that is entirely within provincial jurisdiction to do.

The only issue that came out of that decision from Manitoba was that the provisions of the act must not infringe upon the ability of the Lieutenant Governor to exercise his or her royal prerogative as a necessary part of the process. Well, honourable members, that is not a hard problem to solve, and had the government of Manitoba really been sincere in its commitment to press on with direct legislation they could have come back to the assembly in Winnipeg with new legislation that would have corrected that one almost, I would say, technical default in their otherwise exemplary scheme. But they didn't.

We have this odd long history of oscillating between hot and cold over whether direct democracy is a good thing, whether the people should really be involved in the process or not. By the time that opportunity came they were blowing cold again and so we never got such legislation. But it is not at all beyond the easy effort of a legislative draftsman working with you to correct that problem.

As far as other constitutional dimensions: In my book, by the way, Political Rights, I talk about the constitution of Ontario and the other provinces and how we have the legislative capacity within Ontario to amend the province's constitution. There's discussion in this paper about

going to the House of Commons and getting Parliament involved in it. That is certainly leading you off into an alley that goes nowhere other than a brick wall, and I would recommend that you not go up that alley.

On the constitutional question: Yes, it cannot be about an issue that is entirely in the jurisdiction of Parliament. It would have to be an issue that is within provincial jurisdiction.

Mr Wildman: What about shared?

Mr Boyer: On the shared one, most certainly that would include constitutional questions. I would think it's highly probable that within your term of office in this current Ontario Legislature, we would likely see a province-wide referendum in relation to the situation involving Quebec and Canada. We haven't got to that yet, but there are a lot of major agenda items here. That's why I said at the beginning that whatever else you're doing in this committee, this is a fundamental issue, this question of participation by the people on these issues that will relate to including constitutional change in Quebec in the two- to three-year time frame.

There was also a constitutional question that really Mr Wildman was asking, before the noon break, about minority rights. I think the legal representative from the Attorney General's office gave the correct answer, which is that minority rights in this country are now fully entrenched and protected by the Canadian Charter of Rights and Freedoms. I think that is a complete answer to that. Prior to the charter, I think we would have had a much longer discussion on that point and how you could indeed protect minorities, be they linguistic, be they ethnic, be they regional, but those basic concerns I now think are happily not issues because of the entrenched charter protections for minorities within our country.

The final point about the Constitution, though, and it does pick up on these last two points, is I think it would be very appropriate prior, to any referendum vote, that there be a reference to clarify that it is a constitutional question. I think someone was asking a question this morning about whether we find out before or after the vote if it's constitutional, and I think words to that effect are in the discussion paper. It's a very costly and cumbersome thing if you find out after the vote and after the \$40 million and so on that it really wasn't a constitutional question.

The best model by far in this area is in the state of Florida, where there's a provision that requires on a petition that the question would be referred to one of the superior courts in the state of Florida to give an opinion that it is constitutional. That's very early in the petition process. They've got to get maybe 15,000 names to get inside the courtroom door, and then a judicial opinion is rendered as to whether that's a constitutionally valid question, in which case they can then go back out and collect the other million names that they need to get it on the ballot of a state of Florida vote.

In the legislative scheme that I had before Parliament, I had actually proposed a public consultation council made up of three judges who would pass on all legal matters relating to the conduct of the referendum, which could include the initial question of, does this ballot question infringe minority rights or anything else? But I

think that's pretty much the extent, very briefly, about the constitutional and legal implications. Of course, there are many more points to raise, but I'll just try to press on here.

The next section deals with initiation. This is what happens shortly after we're all elected to legislatures. I guess it means initiatives. Here we go: "To what extent should the initiative...be introduced into Ontario?" My view is that it should be, that it's an important part of this process, subject to the points some of you already raised earlier this morning.

Next question: "In the case of initiatives, what should be the signature requirements for successful petitions? Is there a risk that too low a threshold will result in too many referenda?" In my bill in Parliament, I talked about a 10% threshold of eligible voters from the previous election being required to sign a petition that would bring on a national referendum through petition. Even that may be a bit high; 8%, 7% could be a threshold. Certainly, what has been referred to in British Columbia, the number, within the three-month period I think is a very short time frame.

Generally speaking, the way you may want to structure this in a bill is to have two components to how these petitioners would be signing. One would be a total number arrived at, usually as a percentage of the voters list: 5% or 10%. The second is that it be not just from Metro Toronto, but that you get, say, from two thirds of the constituencies across the province or something, so that you're getting both a population number that says yes, there are enough people in our province who think this is something we ought to have a public debate about and see what we think and hear both sides and then cast a vote, but also that it truly is of province-wide significance. I don't think it needs to be every last riding, but maybe three quarters of the electoral districts in the province. That would be a way of doing that.

1500

This concern about too low a threshold: We certainly are not overdosing on direct democracy in Canada, so I don't think we need to worry about having too low a threshold, other than that there should be some means there. But this example in British Columbia, the number of people — I didn't know about this until you read the article today, but the Western Canada Wilderness Committee is a very fine organization that has done a lot on the west coast for environmental concerns. I've travelled with them in helicopters into areas where there was clear-cutting and so on. The thing about WCWC is that they really believe in fighting these environmental battles within the existing structure. These are not guys and gals who go out and drive spikes into trees so that loggers' chainsaws are going to hit them and all hell will break loose and somebody will be haemorrhaging and die on the way to the hospital. These are people who up to now have gone through the courts. They've got injunctions and they've been brilliant in the way they use the court system and the rule of law to address this environmental issue. Now this is kind of exciting. Here's a new avenue, the use of direct voting.

So if they're the ones who are behind this, it doesn't surprise me. They're looking for legitimate means within

the structure of society to work on these issues, and I think as members of this Ontario Legislature it would no doubt be one of your concerns. There are issues out there that are upsetting people, and deeply so. Where are they going to turn? What structures do we put in place for this to be channelled, or do we just wait till bricks come through the windows and do we have the doors of the Legislature knocked down? This is a fundamental thing.

That's why I said, and I repeat it, not just with Quebec and the issues of our national unity and our national integrity but also at a very local level, where do the energies in the community get channelled? This case of the Western Canada Wilderness Committee shows how in British Columbia, which is always highly energized politically, that energy is being constructively channelled. But maybe they're facing big-time problems because the thresholds in the legislation are too high. It sounds like it, if you've got to get all these signatures in three months. That's a very tight rein on a process that ought to be one that's welcoming to serious-minded, civic-minded people to participate in.

The next question is: "Should the government take the responsibility for defining the wording of a referendum question? If so, should the question be reviewed or approved by the Legislature?" My recommendation would be that the legislation set out the pro forma wording. Success has mostly come when the ballot question actually begins, "Do you approve..." For example, the one in 1942 on conscription began that way. Well, it didn't; it said, "Are you in favour of..." "Are you in favour of releasing the government from any obligation arising out of any past commitments restricting the methods of raising men for military service, yes or no?"

In the Ontario liquor votes, it set out in the statute — the wording of all the different possibilities of the questions is there. Obviously the substance of the issue will depend on who is bringing it forward and what they want, but if you begin, "Do you approve of a reallocation of public spending to provide more funds for research into medical illnesses afflicting women in Canadian society, yes or no?" that gives a good formulation, and it's yes or no. In the Ontario ballot format, of course, those would be the circles. Sometimes people say, "Should it be yes or no, or no or yes?" Yes or no: that's the sequence. When the vote is taken in the Legislature, first it's "All those in favour?" then "All opposed?" the yeas and the nays. When you're holding a vote at a public meeting or in here — I even heard it happen here this morning, a couple of votes — it's "Those in favour? Those opposed?" In a court of law, the plaintiff or the prosecution leads off with the case they're trying to make, followed by the respondent or the defendant and so on answering it. So there shouldn't be any concern about that. Some people were asking me about that just the other day, but no, it's, "Are you in favour, yes or no?" It doesn't set up any preconditioned response, according to the studies that have been done.

What I have set out in my own bill about it is definitely that the question would be voted on by the Legislature en route to the people, again this semidirect democracy that I spoke of. How does it come to be in the Legislature? Where does the petition go? If you're out signing

up people across the province and finally you've got it, where do you take it?

In my private member's bill, I had that going to the Prime Minister, because as we all know, whoever is Prime Minister or Premier really has a large influence in the direction of these matters. On reflection, and if I were redoing it today, I would not have the petition go to the Premier. I would have it go to the Speaker of the Legislative Assembly, because that I think is more in accord with a procedure that's coming not through a government or a party channel, but through this lawmaking procedure, so it comes directly to the Legislature. I think it's a way, ultimately, that enhances a little bit the position of the Legislature in the society. It could then, if there's any discussion about the appropriateness, be referred to this committee prior to voting to authorize it to proceed.

Again, there are a lot of technical things here and I'd rather try and stay at a bit of an overview, because I'm sure we're short of time.

"In the case of initiatives, who should define the question?" It would basically be the people who are bringing the issue on to the agenda. They would define it, but within a framework set down in the legislation, certain criteria. Both case law and common sense dictate that the question has to be neutral, it has to be fair, it cannot contain pejorative wording and it has to really pose a question. If it's a lopsided question where people would almost all answer yes or all answer no, you could say that no decision has been made; people haven't had their feet put to the fire on this tough, hot issue. So it really has to join the issue and not be lopsided, but it must be fair and neutral.

"How do we ensure that ballot questions and results do not offend the Constitution?" I think I've addressed that.

"Should there be a maximum number of referenda within a specified period (say, every two or four years)?" No, I don't think so. I think you put enabling legislation in place and then the to and fro of the political life of a province, the issues that emerge on the agenda, will determine what comes forward. But I would recommend that the legislation stipulate that no more than one ballot question on the same issue can be held during the life of a Legislature, or for a five-year term. There are different ways you can do it.

1510

But again, there is a significant cost in this. It is an important process; it ought not to be trivialized. Therefore, it makes sense to say, "Yes, you can put any question there, but once people have pronounced on it, that's it." We don't want the Lucien Bouchard phenomenon here, or even René Lévesque, because he said it as well: "Well, we'll just keep holding these till we win one." I think that's a good way of covering that off.

"How should we handle multiple questions that address the same subject matter?" Well, with great care. I think the purpose of the referendum is to bring a choice, indeed force a choice, on an issue. In 1922 in Ottawa, there was a municipal plebiscite on three questions: Do you want to have a council consisting of a mayor and seven councillors; or a mayor and four councillors and 11 aldermen; or retain the present system? Three questions. So everybody went out and they voted for all three, with the result that

no decision could be taken. You really have to have the two issues.

There are some questions that maybe on the financial side of things are too intricate to really be boiled down to a single ballot question, but there are a lot of other questions that can be. Ultimately, every decision that you're going to make does come down to a Yes or No. There's a war on, whether it's in the Gulf or our most recent war: Do we stay or go? Is it Yes or No? A trade treaty with the Americans: Are we going to have one? Yes or No? Separating from Canada: Yes or No? They're very complex questions. At the end of the day, though, when you stand in your place in the Legislature, you have got to have boiled down all the nuances, and you're going to stand and be counted with the yeas or with the nays. That's the same, what this process is about.

Multiple questions, unless that is getting at whether there could be two or three different ballot questions on the same issue, I think they should all be rolled into one. We used to have multimember electoral districts in Ontario and elsewhere across the country. They're going to bring them back in in Nunavut, in the new territory in eastern Canada. There will be a male representative and a female representative for every electoral district. Basically, we've gotten away from multimember districts. We used to have two, three, even four members of the Legislature from one constituency. You could see the pros of that; you could also see the cons of it. I think this is kind of the counterpart in the realm of direct democracy. It's better to stick with one question in terms of clarity and accountability.

There's another part to this question: "Should the government or Legislature be able to place a counter-initiative on the ballot alongside a citizens' initiative?" No. The government, if it wanted, could campaign against it, but if it took the citizens to initiate an issue that the government felt strongly enough about that it was then going to go out with a counterballot, then why didn't the government do it in the first place? Why did it take the citizens to provoke this?

Let me give you two examples of where citizens actually came ahead and did something that the governments couldn't do. One is in the state of California, often maligned by people who are opponents of citizen participation, who say, "Oh, they've got far too many referendums going there." They never evaluate properly the ability of that dynamic state and its highly educated people and its political sophistication to sort these questions out, and they do it very well, including addressing the excesses and correcting for that.

One of the things, if you know the state of California, there's this tremendous Pacific Rim park that goes all the way down. It's unique geography on this planet, and it's preserved in the public domain for the benefit of the people. How did that happen? Through a citizens' initiative. It was placed on the ballot in the state of California because citizens took the initiative. Why didn't it come from Sacramento and the government? Well, if you know something about what I said a half-hour ago, or maybe more, about the United States' system of financing elections and this morass that they are in, and if you know anything about real estate developers in the

state of California, you'd have a pretty good inkling as to why the government itself wasn't coming with that kind of plan to keep that land that developers would love to have put into big-scale, high-cost development.

The other example is from Italy. The issue of a woman's opportunity to abort an unwanted pregnancy was really not getting any kind of full public debate or public policy resolution within Italy. Given the prominence of the Roman Catholic Church within Italy and the church's very strong position on that issue, it again is not difficult to understand why legislators in Italy weren't coming up with this idea. It was an initiative by citizens, mostly women, in Italy that got a ballot question before Italy on this question dealing with abortion. As a result, the public laws of Italy changed.

There are many other examples, but I give those as two as to why my answer to this question would be a very resounding no.

Next is about the cost of a referendum, can it be lowered, "especially if it were held outside the context of a provincial or municipal election"? The numbers were given by Mr Bailie this morning, so those stand as the numbers for Ontario. This is an important question, about the cost, for many reasons. The pricetag on the 1992 plebiscite in the Northwest Territories, which was about dividing the territories in two and creating Nunavut and the western Arctic, was \$893,900. The 1991 direct vote in British Columbia cost \$567,455; the one in Saskatchewan, the same year, approximately \$175,000. Quebec's 1980 referendum on sovereignty association totalled \$18,261,160. The 1983 fixed-link plebiscite in Prince Edward Island cost approximately \$200,000.

The chief electoral officer of Canada reports that the 1992 referendum, the one on the Charlottetown accord, cost \$142 million. By far the largest component of this cost, about \$85.5 million, related to the expense of preparing and revising the voters list. That expenditure alone is a good argument for maintaining a permanent voters list, which would also permit shorter elections.

I could add that the following year our national general election in 1993 was held on the basis of the voters list that had been prepared for the referendum, and it resulted in the cost of that general election being reduced by about \$90 million from what it normally would have been. These are big amounts, but there are ways that they can be reduced substantively. We're talking the dollar cost there.

There are also other costs that you want to bear in mind. Let us consider that one of the primary values of a referendum campaign is the process of public education. We're all overwhelmed with information in our society; there's a glut of it pouring on us all day. I know that you, as legislators, are receiving tons of things pouring into your offices, and everybody is. So, many people don't focus on important public issues very often. But if two weeks from Monday you have to go and cast your ballot, "Do you approve, yes or no, this change in the hospital system in Ontario?" or privatizing Ontario Hydro or whatever, all of a sudden you're going to pay attention for that two- or three- or four-week campaign, where you hear both sides being presented and different points of view brought into it.

1520

There's a tremendous public education process in this that capitalizes on our already well-educated population in this province and this country, utilizes our well-formed media networks that operate with such intensity in Canada and permits people to be very focused and come up with an informed decision when they cast their ballot. That's what this whole process is really all about: informed consent, informed decision-making and the collective wisdom of an informed population. So I think when you're talking about the costs, it's important to put an unquantifiable amount beside public education.

One of the unfortunate things about the Charlottetown accord referendum was that there were eight separate issues in there, each of which could have been the subject of its own referendum: aboriginal self-government, devolution of powers from Ottawa to the provinces, and on and on it went. But even though it was such a smorgasbord of different issues before the people, at the end of that referendum campaign, Canadians knew an awful lot more about the condition of aboriginal peoples in this society and what aboriginal self-government could mean and why it was important. So this public education role of this process is certainly one to be treasured and recognized, even though the opponents of greater citizen participation would never even pay that any attention.

Yes, there are costs to doing this. There are costs to maintaining a Legislature at Queen's Park for the people's elected representatives to come to. There are costs in maintaining the court systems in this province so that we can have the rule of law and judges can preside and deal with dispute resolution. These are the costs of a democracy.

We can look to other countries that deny their people freely elected legislatures, deny their people fair and independent tribunals of justice and certainly deny their people the right to participate through direct voting as part and parcel of being citizens in that state. What are the costs of that? Well, we don't have to look very far.

What is the price we can put beside that in our own country — it's priceless — other than to say that many others have died to keep this country free? I think it's not to trivialize that at all to say that the issue before this committee right now is of that order. It's of preserving and enhancing a mature, democratic society, where the people who live here feel they truly have some role in the decision-making that's going to affect them.

Mr Chairman, I'm just going to pause there. I don't think I've gotten through the list of questions, but I think I'm probably getting through the minutes of time that are allocated to me. Could you say where we should be going?

The Chair: We had set aside from 2 to 4 for your presentation, and I know there will be some questions from members. If you have time to continue to engage the committee in this discussion, we'd certainly appreciate it and we appreciate your presentation thus far.

Mr Boyer: There are just four questions remaining, so I'll be very quick with that.

"What is the potential to use some form of electronic voting or mail-in voting as an alternative to traditional polling methods?"

There is potential here. I don't think it would be appropriate perhaps for a province-wide referendum in Ontario, but that's something this committee would want to consider with particular attention, I think.

We have in Canada a company that has really pioneered the use of telephonic voting. It's MT&T — Maritime Telegraph and Telephone — in Halifax. I visited their operation in Halifax to review the control system, the way they do it. They have conducted the leadership voting for several parties: the Liberal Party in Alberta, the Conservatives in Saskatchewan, and others.

To date, as far as I'm aware, the only experiment in the use of that voting technology in Ontario was an experiment I conducted at the University of Toronto just two years ago when the issue was student funding. The Honourable Lloyd Axworthy had come forward from Ottawa's point of view announcing significant changes in student funding, funding that, as translated through the province, would affect students. Although we have 98 out of 99 or so MPs from his same party in Ottawa, none of them was speaking to this issue, yet it was something that was certainly galvanizing attention on the campuses. You may recall something of that.

What I did at the University of Toronto, in a couple of the very large first-year political science classes, I had the president of MT&T come on the first day to explain to the students how this worked, how every voter was given a personal identification number and a phone number to call with their vote, yes or no. It was being done as more of a technical experiment to see if it would work. We did have student leaders in arguing the pros and cons in a debate in front of all these students and then they had 36 hours during which they could phone in their vote. All they had to do was have a touch-tone phone. Footnote: That could be a problem big-time in parts of Ontario if you're going to go to this technology for a province-wide vote. They'd put in their PIN and then they'd cast their vote, and this was all tabulated. It worked well. So it can be done. As I say, I've had experience with it.

More applications of that technology are beneficial, in trade unions, for example, that are trying to conduct membership votes to ratify a collective agreement. This is a powerful tool for corporations, in shareholder meetings and so on. It's certainly something you would want to look at.

The next question, under procedure: "Should the provincial Election Act govern voting procedures in a referendum?" Yes. I've been referring to a referendum act of Ontario as a new act that might be passed, but I really would envisage this as being a part of the Election Act of Ontario.

There's been a history in the evolution of our statutory framework for democracy in Canada towards consolidation. There used to be a separate act — the Franchise Act. There used to be the Voters List Act, and many other statutes. Increasingly these have been consolidated into single statutes, and I think there's a good reason for that.

Across the country now, basically, there are about four statutes that govern. One is, in this case, the Legislative Assembly Act of Ontario, which pertains to the Legislature and your qualifications or disqualifications for being

candidates or not being members of the Legislature. So that's the first. The second is the electoral boundaries readjustment regime. It's a little different in Ontario than in many other provinces, which have standing legislation that automatically requires this to happen every 10 years, but that's a separate statute that pertains to representation of the people and the electoral boundaries. The third is of course the Election Act itself — who can be candidates, who can't be, who can be voters, election officers, and all the procedure. The fourth statute in most areas is the Controverted Election Act.

The tendency increasingly is to combine them. Here in Ontario, the Controverted Election Act has now been folded into the Election Act. I think the next thing that will probably happen is that the Election Finances Act will be folded into the Election Act. I know in Ottawa I always advocated that we have three different statutes dealing with money, power and decision-making. One is the election financing provisions now in the Canada Election Act, another one is the Lobbyists Registration Act and the third is the conflict-of-interest legislation. Each has separate officials, each has different definitions, each provides therefore a great thicket of opportunity for people who want to take advantage of that situation. I think the great national reform will come when we can consolidate those various statutes into one so we have one set of officials, common definitions and a clearer focus on the issues.

1530

Similarly, in Ontario I think it makes eminent sense to have any provisions that would relate to direct voting by the people through referendums or plebiscites or initiatives to be a separate part but within the Election Act of Ontario, because there are many common procedures and so on. So yes, my answer to that is consolidate.

Second-last question: "Does this act require any modifications beyond those needed to enable a referendum?" Yes, the Election Act of Ontario. That's outside the scope of what we're doing, but I think there are provisions relating to the voters list and election day registration of voters. These are issues that certainly Mr Bailie, the chief election officer of Ontario, has on his agenda as being areas that could be dealt with.

Finally, "What are the best referendum practices employed by other jurisdictions in the world?" The best referendum practice in other jurisdictions is that they use them. We were going through our endless Canadian debates about whether there should be a referendum on the Constitution of this country that went on and on for many months, and in the midst of that, in this narrow little slice of time the president of South Africa said, "We will hold a referendum on apartheid," and they held it. They debated it, they voted and they counted the votes. He then spoke to the people and said: "The system of apartheid in South Africa has ended. This is the people's verdict in this referendum. We now turn a new page in the history of South Africa." Done — six weeks, about a month and a half of our endless debates in this country of "Should we or shouldn't we?" For all that we talk about ourselves being a democracy and supporting democracy and having observers at other elections and referendums elsewhere, there are some respects in which we have

continued to be a very timid democracy. It looks at last like that may no longer be the ink in which the history of our province will be written.

The final part of that question is, "How can Ontario tailor [practices] to serve our own requirements?" I could say you could look at my private member's bill. When I introduced that it was the largest private member's bill ever tabled in the House of Commons, although I think Peter Milliken has since got himself into the Guinness Book of Records after me. The reason I say that is, I based that on six or seven different jurisdictions when I was putting it together, and in the book I've given you I describe what those are and the points I was taking from them.

A lot of the provisions in the Quebec Referendum Act are very good. There have been recent serious problems in the administration of that act and the independence of election officers under that, and there's an inquiry going on into that, but in the form of writing statutes Quebec legislative draftsmen have a very fine talent. This was based on provisions from about six or seven jurisdictions, borrowing the best from here and there, as is our Canadian wont sometimes, but I wouldn't recommend exactly the drafting style of this because I've found that having spent, both as a lawyer and then as a legislator, a lot of my adult life looking at statutes, there is a drafting culture in Ottawa that is reflected in virtually all the bills that are passed by Parliament. They're very clear but there's something unbelievably arcane about the style, and in terms of user-friendly, they aren't. I think that legislation can be clearer and more accessible in many of the Ontario statutes, and absolutely the Quebec statutes are written from a very different legislative drafting culture.

Although I'm saying there's a lot in this bill that I think you might find to advantage if you're considering — well, you are considering legislation for Ontario — I would try and make the translation obviously still dans les deux langues officielles de mon pays, mais pas dans la langue des écrivains des statuts à Ottawa.

That is a short way of saying, Mr Chairman, that I've already done a lot of your work for you and I hope that you can benefit from it, because I think it's of fundamental importance for our province and our country.

M. Gilles E. Morin (Carleton-Est) : M. Boyer, je suis très heureux de vous voir ici. Je vous connais depuis déjà 20 ans.

M. Boyer : Oui.

M. Morin : Vous avez toujours été consistant. Vous avez toujours été focused. It's been for you a life challenge, I think, and for all those years you've been consistent and you've been well focused. I congratulate you and I hope that you achieve your goals. Of course a lot of questions are being asked. I just want to refer to an article that appeared in a newspaper. Let me read it you, and I'd like to hear your comments. It talks about referenda.

"For such major and distinctive issues, referenda have their place. But as a regular instrument of government, they are flawed and retrograde, for the following reasons:

"They are simplistic, offering black and white choices, whereas most governmental issues today are complex, involving tricky tradeoffs. Taken in isolation, for example, a tax cut would likely be approved in a referendum. But it is unlikely the voters would also support an offsetting cut in spending on health and education.

"They are inimical to minority rights. The majority at any given time wins, no matter how historically valid the claims of the minority. Imagine a referendum in Ontario, for example, on the question of separate school funding.

"They are subject to manipulation.... But, in fact, as the US experience shows, referenda are highly vulnerable to interest groups, which use heavy advertising and direct-mail campaigns to swing the vote one way or the other.

"Nor is the interest group involvement always transparent. In a referendum on the expansion of casinos in Ontario, for example, it is likely that the 'No' side would consist not just of church groups and others who oppose gambling on moral grounds but also of the operators of the existing casinos, who don't want the competition."

I'd like to hear your comments.

M. Boyer : Merci pour la question. Au début vous avez mentionné que je suis depuis longtemps quelqu'un avec un intérêt dans le sujet des référendums.

Au début, M. Morin, quand j'ai écrit le livre *Law Making by the People* — c'est un des cinq ou six livres dans une grande thèse sur la Loi électorale du Canada — dans cette période-là je n'étais pas un avocat pour la démocratie directe. C'était une exposition de la loi.

Après une décennie dans la vie nationale, dans le Parlement du Canada, et après avoir vu certaines expériences dans les élections et d'autres dimensions de notre vie politique, de plus en plus j'étais convaincu que les référendums étaient un élément positif et nécessaire dans notre société, toujours balancé avec les autres éléments, mais pour une maturation nécessaire de la vie démocratique du Canada et de l'Ontario. Alors, c'est une cause célèbre pour moi, mais après une certaine période de réflexion.

You read the article in English, so I'll answer in English. I agree with everything that was being said. What was being said? That referendums are simplistic, they're black and white, they fudge the hard tradeoffs, minority rights will not be well respected, for example separate school funding, I agree, and exactly the same criticisms can be made of the election procedure in this province.

1540

Elections, simplistic? Maybe some of you have been involved sometimes in taking a complex issue and making it sound just a little simpler so that those seniors or those school students or those workers on the assembly line could hear it the way you wanted them to hear it.

Black and white? Yes. I can think of elections in this province where issues were painted very black and white, in a way that anybody who was thoughtful and really cared about public life knew was too black and white for something that was painted entirely in shades of grey. This criticism from whoever wrote this article that hard tradeoffs would be fudged a little bit in referendums, that people wouldn't really be asked, if you stopped funding the hospitals, what about schools — it never happened in

election campaigns that the hard tradeoffs are fudged? It happens all the time.

What about separate school funding? Let's hear about how Bill Davis came into office with a majority, promising with one word, "no" — *je me souviens* — and left public office with the opposite word, "yes." And I think your editorial said something about manipulation and minority rights. These criticisms that are being levelled at a referendum process ought to be levelled at the political process and the election process. But is the author of that editorial saying, "Let's get rid of elections, let's ban legislators and let's board up Queen's Park"? No.

Where's the logic, where's the fairness, where's the justice, where's the animus in the person who wrote that and said, "These are reasons that we can't have referendums, because of all these bad things"? I think it's a very unfair brush that whoever wrote that is painting this important subject with, and it's typical of the anti-democratic attitude that pervades the élite and the establishment in this country.

Mr Morin : Just a very short question: How do you prevent governments from using referenda as political tools? I'm talking about any government. In other words if they're stuck, if they cannot make a decision within themselves, they appeal to the public and with good campaigns, promotions, they achieve their goal and say, "That's what the public wanted." How do you prevent that?

Mr Boyer : The first measure, to answer, is to say that governments are not operating in a vacuum. They are operating across the House from opposition, under the watchful eye of news media, accountable to electors, so there are restraints within our system, and to the official opposition and a vigilant, free news media I would also add the courts. Recourse can be had to courts on some of these issues, especially now with the charter.

Sometimes I think our Canadian experience shows that it's the opposite, that when governments have finally been forced to go to the people, like in Manitoba on the liquor issue — they went three times and couldn't contain that issue in the Legislature of Manitoba. It just divided the parties; it divided the cabinet. There was no resolution. The liquor issue in earlier times in Canada was like the abortion issue today. People have views on it that will not be reconciled. Finally they said, "Let's involve all the people; we'll take this outside the four walls of the Legislature and involve all the people," and that's what they tried. Actually, it took three different plebiscites in Manitoba on that issue before finally everybody said: "There's no common ground on prohibition. We've worn ourselves out fighting this thing, we're fatigued. Let's all settle for some kind of compromise." The uses of this device are many and varied and that's one of them.

I think the best check on governments that would abuse this process would come recently, for example, in two of our western provinces, Saskatchewan and British Columbia. A Progressive Conservative government in Saskatchewan went to the people on issues about funding abortion and on a couple of other issues that they felt could excite a popular response in a way that would bring voters out in large numbers, "And by the way, those voters are probably predisposed to vote PC," their

thinking went. The voters went out to the polls and roundly defeated them. In British Columbia, the same thing: this death-bed conversion to direct democracy by a government that was bringing in these recall provisions and the other ones that Mr Wildman's been referring to. The people voted for those overwhelmingly and in the process trashed the government.

I have a profound respect for the collective wisdom of informed people, informed citizenry. It comes through time and time again at the ballot box and I would take nine times out of 10 that the verdict there is right. To answer your question, I think those are the checks we already have in place for accountability and preventing abuse by governments of this process.

Mr Silipo: Thank you, Mr Boyer, for your very fascinating presentation. I wanted to ask particularly about one of the first areas you talked about, this question of defining the parameters around which referenda would be used. You talked in the national context about the framework being issues that would be of pre-eminent national significance. I wanted to hear you talk about what advice you would give us more particularly around how in the Ontario context that should be defined. One of the things that troubles me in the paper from the Premier is putting together, under the definition of fundamental public policy issues, things like constitutional amendments, which I would agree are by and large under that definition, and at the same time issues of examples like the expansion of casino gambling or new provincial taxes, which I would not put under the same category. I appreciate that obviously others do; the Premier in this case has.

I would be very interested in your views of how we ought to differentiate or define, or should there not be any definition of what should be the subject matter of either or both government-initiated referenda and citizen-initiated referenda?

Mr Boyer: In my book I list seven or eight criteria drawn from our history and from political theory as to what should be a reason for having a referendum. I think earlier I said that you can't really make up two lists and on this side say, "These are questions we'll always put to the people, and these are ones we never will." Here we're talking about government- and Legislature-initiated votes rather than citizen-initiated, and certainly constitutional amendments, without question, fall in that category of a transcending provincial issue that the people have to be included in. Indeed, without us amending our Constitution in Canada, we have now developed a new convention of the Constitution which says, "There will not be any significant amendment to the Constitution without ratification by the people through a direct vote."

1550

For some reason, it took our cousins in Australia a lot less time to figure that out. In 1900 they put in their Constitution a requirement that said anybody who proposes an amendment to the Constitution has to get it ratified by popular vote. At last count, I think about 32 constitutional amendments were proposed in Australia during this century, all of which necessarily went to a vote, eight of which passed. Some people have said to me: "That shows you're only going to get eight out of

30-some through. Look at all that effort that goes into trying to get those amendments through." To which my answer is, "Precisely, exactly."

That's the check on the system. Who can presume to come along and say, "By the way, I've figured out a really neat change to our Constitution, and I think it's going to be just fantastic," yet if you can't persuade a majority of your fellow citizens to change this fundamental document under which we all live, why should your hot new idea prevail? If you can't persuade a majority to vote in support of it, you have no right, legally or morally, I would say, to make that change in the Constitution.

There are a lot of reasons Canadians have become very frustrated and alienated from their political system over the past couple of decades, but surely one of them has to have been this incessant, three-decade, ongoing obsession with constitutional change and first ministers and federal-provincial conferences and everybody sitting down to talk about how we're going to solve all our problems in the constitutional context, never involving the people, never, at the end of the day, solving the problems. Are we better off today in terms of Quebec being a happily reconciled partner within Confederation at the end of 30 years of that? No.

So I think this reality check comes from these votes. You might say that a reality check on certain issues of transcending importance is one of the criteria.

I do list the seven or eight of them in this book. If I could find it quickly — there was a time when I could have put my finger right on it. Anyway, going from memory, the criteria would include that if it was an issue that had not been addressed in the previous election so that no government or party had a mandate to deal with it, but it was a new issue that had come up and was of transcending importance, it would be an argument to go to the people and say: "This is something that's emerged. Let's deal with this."

Another one is if it's a situation where the government has somehow got itself in an intractable mess, everything is bogging down and it actually needs some kind of lever to get out of it. After all, it's the government of the people. You are here for the people. The government's here for the people. This isn't like you get elected and we have a government that goes off into exile for four or five years. So you can turn to the people and say: "Look, we really have a mess here. We're all blamed because we got into but we'll take the real blame. But here's the ballot question. Let's see if we can debate it and answer it and maybe that will help us get out of it." It's a way of helping the government extricate itself.

Certainly for a national government the role of a referendum may be to gain a strong position in its international relations on certain issues, some of the things we'd be dealing with the Americans on. In provincial terms it could be similarly applied to issues that would relate to transfer payments. It could be issues that would relate to changes in the Constitution and the devolution of powers and changes relating to any number of things of a constitutional nature where you would need that.

Arthur Meighen wrote about it as an issue that would change a fundamental positive principle of the country.

Again, those are words he didn't say at the time he was opposing Wilfrid Laurier's resolution to have a vote on conscription during the First World War, but he subsequently came to recognize that something as fundamental as those issues really does need to be put to the people.

I suppose you could also add to this category that if a party has campaigned on having a referendum, then that would certainly be in the category. We have in Ontario a government that has committed to province-wide referendums on any tax increase and on any additional casinos. Now, you could take that to read, alternatively, as a commitment that there will be no tax increases and no new casinos. Speaking personally, that would be my hope.

But this isn't the first time, and the more you live with Canadian history, you see that we keep going around and around. The Liberal Party of Canada in its convention in Ottawa in 1895, dealing with the transcending issue that upset everybody — liquor — said, "We will hold a dominion plebiscite on the liquor question," and the following year, in the great election of 1896 when Laurier became Prime Minister, the Liberals were elected and that was part of the platform, that there would be a national direct vote on the liquor question. It took them two years. They had to get the legislation passed. There were long debates in Parliament that echoed concerns that are being raised here, and they are set out at some length in this book, *Direct Democracy in Canada*. It happened, a direct vote, because it was campaigned on as part of the party's platform. That would be an additional basis.

The Chair: Thank you. I have four members who wish to ask questions, so could we keep our questions and our responses brief.

Mr Boyer: The answers are too long.

Mr Wildman: I have a lot of questions I could ask related to your presentation. I appreciate it very much. But central to what you were saying with regard to referenda as opposed to elections to decide important fundamental questions, you pointed out that in elections there are a lot of different issues, a lot of different factors — leadership of the party, perception of the parties and so on — that can affect the vote, so you can't really point to a particular issue or a group of issues. You pointed out things like free trade, and I might add the GST, that if we had had referenda specifically on free trade and the GST, we might have a very different situation in Canada today.

I'd like to turn it over. I think you have the same problem with referenda. I would posit that one of the factors, one of many, that led to the defeat of the Charlottetown accord was the unpopularity of the Prime Minister and his government at the time — just one; there were many other factors; that many people chose to vote not just on the question but also on the participants in the campaign. And I'd say it's the same thing in the Quebec referendum. I would think that many who voted Yes were voting for Lucien Bouchard as much as voting on the specific question, because of his popularity particularly among francophone voters outside of Montreal.

How do you deal with that? Surely there are going to be those factors involved in any referendum campaign as well.

Mr Boyer: Yes. I think one of our problems with referendum campaigns is that we lack experience with them so we don't do it very well. It's like baseball players going out on the field for the first time in spring training or something, a little bit wobbly. We have had our national referendums at half-century intervals — count them — 1898, 1942 and 1992. This is not something you're going to get familiar with in how to do very well. The necessary tendency is therefore to treat it like the thing you know best, which is an election campaign, and it's not. It's a different process. It's focused. It's on one issue. There are pros and there are cons. They need to be advanced on both sides so people can, with reasonable calmness — they're always going to be on controversial issues, so calmness is relative. But it's trying to keep the personalities out of it, because that's what's pre-eminently in a campaign. A campaign is about philosophies and policies and personalities, and referendums should only be about policies.

1600

The Prime Minister felt very strongly that the success of the Charlottetown accord was vital to the country's future and could not restrain himself from participating very actively in the campaign and giving it some direction and leadership. Behind the Yes side on that was what was called the dream team, all the best organizers nationally from the New Democratic Party, all the best organizers nationally from the Liberal Party, all the best organizers nationally from the Progressive Conservative Party. Who could lose, right?

What were these organizers very adept at doing? Running election campaigns, not running referendum campaigns. Again, this is the moment when the painter is there with the little narrow bristle brush just doing the delicate work around the window-panes and somebody comes in with the roller, and that's part of the problem. Yes, I think the personalities got into it, but they came in —

Mr Wildman: Do you think M. Bouchard was wielding the roller in the Quebec campaign?

Mr Boyer: Yes, he was. And for all that the Reform Party and Preston Manning have advocated direct democracy as being an important tool in our system, I think he takes a full measure of blame for the injection of personalities into that 1992 referendum campaign, because it was he, in his advertisements and in his public speeches, who talked about "the Mulroney deal." It was always "the Mulroney deal." It was never something that was just the referendum on the Charlottetown accord; it was highly personalized by people who wanted to defeat it. It takes two to tango, and unfortunately, we got more political content in that referendum than I think was healthy for it.

Would that people had had the same belief in direct democracy earlier, with the Meech Lake accord and in that long three-year period where we saw that wither and die with its five very clear and specific points. If that had gone directly to the people in a national referendum within the first four to six months after it had been agreed to, I have a strong belief that the Canadian people would have profoundly ratified that and this issue that is confronting the future of our nation today would not even exist.

Mr Wildman: I'd just make the short comment that while I am not necessarily opposed to the idea of referenda — frankly, I participated in a campaign on one, as many of us did. I recognize that they should be on issues on policy, but people can say that about elections too, for that matter, and I would suspect that personalities are inevitably going to become involved.

Mr Hastings: Thank you, Mr Boyer, for your very detailed presentation. My question relates more to minority rights. Why do you suspect that the media élites that want to criticize any government that looks at implementing any type of referenda legislation use the minority rights criticism or critique in order to prevent or halt discussion on whether referenda could be useful, given that we have constitutional protections already in place for most minority rights in this country? Is it because they have a panicky sense of losing control over the flow of information?

Mr Boyer: That's a very perceptive question. I think the reason they choose the minority rights issue is that it's probably the most salient issue to grab hold of, because Canadians generally are extremely mindful of the issue of minority rights. This is a country of minorities. We always talk about the majority. There's no Canadian majority. Canada is a country of minorities. So it's something that we all live with and are very attentive to. Even when we hear the word, we're almost preconditioned in our response. So yes, if there are, as you say, people in the media élite who are pushing that button because of the heat it will generate, they know why they're doing it.

Then your follow-up question is: Why are they pushing that button in the first place? Well, who is controlling the public agenda? Who decides what public opinion is? We have seen over the past decade business arrangements entered into between major polling firms and major news media, whether it's the Globe and Mail and certain polling firms or whether it's the CBC and certain polling firms, and so on. At various intervals you, in the course of being an elected representative, will see something presented as a new issue that's emerged because some poll has been conducted on it and it's getting a lot of play in the media, maybe a lot more play than it otherwise would, because that news media agency has funded the cost of it.

Talk about pride of authorship. I think there are people here who are proud of their ability to be authors of what's on the public agenda. We're not talking here about the small community newspapers. We're talking about fairly small, and increasingly concentrated in its ownership, media outlets in our country where there is an ability for people to sit around and make editorial board decisions about what issue will be covered or what won't: "Which one are we going to assign two or three investigative reporters to for a couple of months and we'll put so many thousands of dollars into it? Which one can we hire pollsters to go out and do and get some issue going?"

If that's the way it's operating — and that is the way it's operating. I remember being one time on Pamela Wallin's program where she was interviewing me and Martin Goldfarb over this very issue, about direct democ-

racy. Mr Goldfarb was going to great lengths to say why referendums were a bad thing. He, of course, is someone who knows what the public opinion is because he's in the business of sampling it and manipulating it. As he said, it's an art form to take those raw numbers and "massage" them — I'm quoting him — into something that is meaningful to government officials and others.

Well, in another country, in another age, Rasputin held sway with the tsar. Why? Because Rasputin could go and whisper in the tsar's ear, "Tsar, I know what the people are thinking" and he could tell him. It's very powerful and seductive, if you're in that position in this country, to determine the policy agenda.

It gets very unpredictable, very unpredictable, if people themselves are going to have the opportunity to come forward and put some issue on the public agenda.

Mr Hastings: All the more reason for having referenda, then, as an antidote to counteract what's happening with the media élites?

Mr Boyer: Absolutely. And initiative, the right of citizen initiative.

Mr Bartolucci: Thank you for a very excellent presentation. You said earlier that in defining the legislation for a referendum you should build in some criteria which would protect the ultimate decision of the referendum so that it is in fact a true referendum, and you do that through wording. What type of general criteria are you talking about?

Mr Boyer: This is a good way to end, because we now have to talk about what's a referendum and what's a plebescite. Basically, in the law — this is really pretty simple stuff, so it shouldn't take long. It's the same phenomenon. It's people hearing a debate and then going to the polls to cast their ballots on a question, answering yes or no. If the result of that balloting has to be implemented by the government, whichever government, that is legally binding and that's a referendum. If it's not legally binding, if it's simply asking a ballot question to see what people in an informed way think about it, it's a plebescite.

1610

So we've got this distinction, but in Canada today it is hopelessly confused. The Referendum Act, so called, of Quebec contains nothing within it that is mandatory about the results being implemented. The Referendum Act of Newfoundland, ditto. The Referendum Act of Canada, dealing with constitutional questions, is only enabling plebescite, ballot questions. When I proposed an amendment on the floor of the House of Commons to that act, to change it to the Canada Plebescite Act, Harvey Andre, the government House leader, got up, said, "Well, this is really a plebescite, it's not binding, but we're calling it a referendum." So black is white. The House leader whips on, everybody votes, and now we call something by its wrong name.

At the end of the day, the terminology is hopelessly confused, and for simplicity it seems we're now increasingly using the word "referendum" to cover the whole approach. Maybe that's not bad. We know what that word means. One is Roman and one is Greek, two words for essentially the same thing. I suppose if we were to say non-binding or binding referendums, that would be one way of clarifying it.

While we're on this, I see this paper refers to "referenda." I don't use that myself. I use the Anglo-Saxon "referendums," partly because in the Latin gerund of referendum there is no plural. "Referenda" necessarily connotes a plurality of things to be referred, a number of questions on the ballot. Besides, in the third supplement to the Oxford Dictionary they have a note explaining all this. Either is appropriate, but I think the Anglo-Saxon usage is easier on the ear. We don't hear about the whips down the hall here having difficulty maintaining their "quora" from day to day. "Is there a quorum?" Are there quorums in the House or quorums in committee? We go to the "arena," or maybe we're going to go to the "arenas." We don't go to the "areni."

I think there's something just a little too precious and a little too affected with some of this other usage. We're seeing it at External Affairs now where officials refer to "fora" instead of "forums." That's why I say, as many others do, "referendum" and "referendums."

But the legally binding nature really needs to be specified.

In my bill I talked about public consultations and the four different kinds: the binding ones initiated by the government; the ballot questions, which are your traditional plebescite; the citizen-initiated one, and constitutional questions. But there's a lot of terminology in this that, if we want to be precise, it's worth doing. In this province it's the chief election officer. In all other jurisdictions across Canada it's the chief electoral officer. So when Mr Bailie would be back again he's the "chief election officer."

The final word on that is "disfranchisement." You see, in this document it talks about "disenfranchisement." Well, as I understand, the franchise is the vote, the right to vote, so either you have it or you don't. If you're being given the right to vote, you're being "enfranchised." If they're taking the right to vote away from you, they're "disfranchising" you. But it's very hard at the same time to be given something and to have it taken away, which is what "disenfranchising" says, yet that word is commonly misused as well.

Mr Chairman, I did find that list of the seven criteria that I was fumbling for previously — it's on pages 118 and 119 of *The People's Mandate* — criteria that can be applied as to when it's appropriate to have a referendum. I have no doubt that there will be times in the fairly near future of our province when it will be considered indeed appropriate for that to happen, and I hope the good work of you and your committee members will see that we have the finest referendum legislation there could be anywhere right here in our province of Ontario. Thank you.

The Chair: Thank you very much, Mr Boyer, for your in-depth and detailed presentation; also the information you've left with us. It's going to be very helpful to the committee in terms of its deliberations. We sincerely appreciate the time you've taken to come in today.

ONTARIO TAXPAYERS FEDERATION

The Chair: Next on our agenda is the Ontario Taxpayers Federation, which is represented here by Mr Paul Pagnuelo. Mr Pagnuelo, will you come forward?

Mr Paul Pagnuelo: A difficult presenter to follow.

The Chair: Thank you for coming today and we look forward to your presentation as well. We've set aside half an hour for you, if I could just make that clear at the start.

Mr Pagnuelo: I'm Paul Pagnuelo, executive director of the Ontario Taxpayers Federation.

The OTF welcomes the opportunity to comment on the government's consultation paper on referendum. I would mention that our national organization, the Canadian Taxpayers Federation, will be presenting a detailed legislative proposal when it appears before you tomorrow. As such, our submission today will deal not with the nuts and bolts of how the referendum process should work but more with the reasons supporting the need for direct democracy and some of the more common arguments which often are made opposing referendums.

Canada's democratic institutions are today experiencing a crisis of confidence. Our parliamentary institutions, which historically have provided stable and responsible government, have failed to keep pace with the growing complexity of contemporary governance and to provide a meaningful role for an increasingly sophisticated electorate.

Evidence of this failure abounds.

Public opinion polls reflect the increasing lack of faith that voters place in politicians and political institutions, a reflection of both the inability of government to meet public expectations and a profound cynicism about the willingness of politicians to tell the truth and represent constituents' interests. Wild swings in voting patterns and the sudden emergency of new parties indicate that traditional partisan allegiances no longer govern voters' loyalties, as the partisan system becomes increasingly irrelevant to peoples' lives. Canadian voters have begun to exhibit an almost deliberate disregard for the views of the political establishment, as evidenced most clearly by the massive public rejection of the Charlottetown accord in 1992.

While this growing public cynicism towards representative government may be understandable, it has a corrosive effect on our public life. If politicians wish to reverse this trend towards the alienation of large segments of the electorate and wish to revive a dynamic sense of civic responsibility for our democratic political institutions, then they must begin to seriously embrace systemic reforms which would empower voters by giving them a direct stake in critical public issues.

The only meaningful way to do so is to adopt a workable system of direct democracy, particularly the right of citizen-initiated referenda.

We strongly endorse the government of Ontario's consideration of the proper role of direct democracy mechanisms in our political system. The OTF believes that the adoption of procedures, such as government- and citizen-initiated referenda, would do more to restore public trust in government than any other systemic reform. Such measures would complement rather than threaten our established parliamentary tradition of deliberative and representative government.

There are several common objections raised by the opponents of greater citizen involvement in decision-

making. All of them boil down to a basic distrust of the common sense of common people. I would like to deal with these objections and our response to them.

(1) That direct democracy would destroy our parliamentary tradition of representative and deliberative government.

The adoption of properly framed direct democracy measures, such as initiative, would enhance, not diminish, the need for or the role of elected representatives in government. The experience of every jurisdiction with a system of initiative, including such Canadian jurisdictions as Alberta between 1919-1958, indicates that initiative is used infrequently and does not diminish the deliberative role of legislators and the administrative role of the executive branch of government. Indeed, during the 40-year period that Alberta had a workable initiative law on the books, it was used only once, hardly posing a danger to the traditional role of the Legislature.

1620

Rather than diminishing the valuable role of our parliamentary institutions, the judicious use of direct democracy would likely enhance the credibility of those serving in the Legislature. By demonstrating a real faith in the wisdom of voters on important and controversial issues, such faith would be reciprocated by voters in the representative judgement of their elected legislators. Trust in a democracy is a two-way street.

(2) That binding, direct initiative would be unconstitutional.

Some argue that binding, direct referenda and initiative would contravene the supremacy of Parliament and would be unconstitutional. This is based on a misunderstanding of the historical and legal record.

The issue was addressed directly by the judicial committee of the Privy Council in a 1922 case which examined the constitutionality of Alberta's Direct Legislation Act. The court upheld the Legislature's right to amend the way in which laws are passed, namely, by holding itself to pass legislation approved by voters in a binding referendum, so long as the ostensible independence of the Lieutenant Governor is recognized. This logic has been clearly endorsed by leading constitutional authorities such as Peter Hogg and Mel Smith.

(3) That referendums may yield unfavourable results for minorities traditionally excluded from the political process.

The argument is made that minority rights are more likely to be diminished by decisions made by a majority of voters in a referendum than decisions made by elected representatives. Opponents see direct democracy as tyranny by the majority, that minority rights, no matter how valid, would be abridged because the majority view always wins.

The fact that the majority always rules is a basic tenet of representative democracy. A party is elected as the government because it wins a majority of seats. The Legislature enacts laws when it secures a majority vote. Are opponents suggesting that the majority view should be discounted in favour of tyranny by the minority?

In a direct democracy vote, the rights of the minority or, for that matter, the rights of any citizen or group of citizens would be governed by the same protection as is

any legislation enacted directly by elected representatives. No bill would be valid or allowed if it contravened the Canadian Constitution and its Charter of Rights and Freedoms.

In reviewing the experience of the Swiss and the Americans, there has been no successful referendum in which there was a flagrant act of majority tyranny against minority rights. The difference between elected representatives and popular majorities protecting minority rights is at most marginal.

(4) That the introduction of referendums would lead to an uncontrollable proliferation of public votes.

There seems to be an unfounded perception that referendum legislation will necessarily lead to a vote a day. The fear that referendums would be logistically unmanageable is one based on a lack of understanding about how a good referendum law works.

Most people would probably agree that referendums should be used sparingly, that they should be held on issues that are of greatest importance to citizens and that costs are a major consideration in the number of referendums that should be held. Any well-constructed referendum law deals with these objections in a forthwith manner.

Citizen-initiated referendums are, by their very nature, conducive to the principle that only the most important issues ought to see the light of day. The petitioning process in order to put a question on a referendum ballot requires that enough citizens believe the issue significant enough to require a vote. In the submission of our national organization tomorrow, the Canadian Taxpayers Federation will propose that a threshold of 10% of the ballots cast in the last provincial general election be required to sign a petition before the proposal can then proceed to a referendum. This is a very high threshold for attaining successful petitions.

In the states of Wyoming and Illinois, which have signature requirements of 10% of eligible voters, not a single initiative qualified for the ballot between 1981 and 1990. In contrast, Switzerland's threshold of 1.5% results in regular referendums.

In addition to the basic threshold safeguard, other barriers would prevent a plethora of referendums from occurring. Requiring sponsors to develop legislation before it goes to petition or referendum would further ensure that no spurious proposals were accepted. In short, there are any number of safeguards to prevent the referendum process from overuse.

(5) That some issues are far too complex intellectually for ordinary voters and can only be decided by elected representatives who are paid to understand them.

This argument suggest that ordinary voters are less intelligent, less public-spirited and less informed than elected representatives. It not only represents an anti-democratic bias but is elitist and ignores the changes in society over the past century.

Such a presumption, if carried to its logical conclusion, would disallow the possibility of voters casting ballots, not just on referendum questions but for their elected representatives as well. Given the fact that we entrust voters to make decisions based on the detailed policy platforms of political parties, why would we not also

allow citizens to vote on policy options outside of general elections?

In fact, recent studies conducted in the US show that, compared with candidate election voters, referendum voters are older, have more formal education, are of higher socioeconomic status and are more involved and active in politics. Analyses of voting behaviour in candidate elections show that these traits are the main correlates of political knowledge and understanding.

Based on this empirical conclusion, it would seem more appropriate to perhaps allow citizens to vote in referendums than it would to allow them to cast ballots for elected representatives.

Perhaps the best anecdotal evidence to suggest that voters can become very attuned and informed as to the contents of a referendum proposal can be found in Canada's recent experience with the Charlottetown accord. Arguably, the referendum on the accord generated more public discussion on substantive and what might be called complicated constitutional issues than this country has ever before seen. The 1992 referendum was not just a vote but an exercise in public education and deliberation on a massive scale. Canadians may never before have been as familiar and well-informed about an issue as they were with Charlottetown.

Still, there exists the possibility that irrespective of how intelligent or informed the electorate might be, they might be tricked into voting for a proposal that runs contrary to their interest. Opponents of initiative and referenda point to the fact that ballot measures in the US are frequently worded so that a yes vote is in effect a vote against a particular policy.

Several studies show that in elections in which voters had to vote yes on a proposition to oppose a policy or no to support one, 10% to 20% of them cast mistaken votes. However, on measures on which most of the voters had very strong preferences, almost all accurately perceived the policy consequences of yes and no votes and voted accordingly.

In order to address the potential problem that voters might be misled to vote for a proposal that they do not support or to vote against a proposal that they do support, the Canadian Taxpayers Federation will be recommending tomorrow that a referendum question be posed as a vote for or against a specific bill. The question would read, "Do you support" followed by the bill number, the bill's long title and a question mark. Voters would not be asked to support or oppose some undefined, ambiguous concept, but rather a fully developed piece of legislation. The proposal would also ensure that the title of the bill would present an accurate description of the intent of the legislation. This simple safeguard would protect voters from being tricked into voting for propositions they oppose or against those they support.

Today there is no longer the difference in wealth or education between voters and their elected representatives. In terms of communication, education and social conscience, voters are far better equipped today to make intelligent decisions on complex issues than a mere 130 men and women whom they pick to send to the Legislature every four or five years. The bottom line is that if one accepts the premise that adult citizens should have

the democratic right to vote for others to represent their interests, then one must accept the principle that those same voters should also have the right to express their interests directly.

1630

(6) That governments, corporations and special-interest groups would buy votes with costly ad campaigns.

Special-interest groups are already affecting legislation in their favour by brokering interests with politicians at all levels of government. The principal difference between interest groups exerting influence without referendum legislation as opposed to having such a process in place is that these lobbyists can obscure their campaigns from public view. Referendums would force special interests to operate aboveboard and to attempt not simply to influence elected officials, but to win over the entire electorate.

The view that voting adults are simply automatons who take directions on how to vote from big-money ad agencies is an unproven theory. If the Charlottetown accord is any measure, it can be readily dismissed. The fact that the Yes side of the campaign, replete with far more interest groups, political parties and corporate interests than the No side, was thoroughly trounced should say something about the possibility of vote-buying in referendum campaigns. Charlottetown tells us that all the money in the world can't convince people to alter their votes.

The referendum is a means for citizens to control the influence of special interests, and not the reverse. In summary, it's harder to bribe or influence the many than it is the few.

To conclude, direct democracy paves the way for the public to enact reforms which may have been neglected by government and to restrain out-of-control government spending and ill-fated legislation. It also diminishes the tyranny of a bloated and largely unaccountable bureaucracy. By providing ordinary people with greater political responsibility, the public interest will be better served and the apathy and alienation which people feel today will dissipate.

Direct democracy works if it is done with care. Referendums are a useful supplement to, not a replacement of, representative democracy.

The Chair: Thank you, Mr Pagnuelo. Questions?

Mr Wildman: Just parenthetically, I don't believe voters can be tricked. I've been in this business for a long time.

I have actually three areas I'd like to pursue with you. You talked about initiative laws, the law that was in place in Alberta. Right now there are initiative laws in place in British Columbia and Saskatchewan. In your view, are these workable pieces of legislation?

Mr Pagnuelo: No. The one, if we take BC, is not workable. I don't want to, I guess, unveil all the details of the proposal that the CTF is going to make tomorrow —

Mr Wildman: Okay, fine.

Mr Pagnuelo: Jason will address that tomorrow. I want to say on that particular point, though, we have to ensure that there are reasonable safeguards and a reasonable threshold in place to ensure we don't end up with

frivolous questions being put to people on a regular basis. So we have to make sure the threshold is high enough but, at the same time, that it's reasonable, that it can also be achieved, that it's not so difficult that most people would never, ever be able to achieve it.

There has to be a balance. We hope we have found that balance, and I alluded to it earlier, in terms of 10% of actual ballots cast in the last general provincial election. Although it's a high target, we believe it is achievable.

Mr Wildman: With regard to the Charlottetown accord, I accept that what you're proposing, and I guess will be expanded upon tomorrow in the presentation, is simple, straightforward questions on particular issues, rather than broad —

Mr Pagnuelo: Broad, nebulous, rambling —

Mr Wildman: Which, when we were dealing with the Charlottetown accord, was a very broad question in terms of many different changes to the Constitution.

Mr Pagnuelo: It was really an omnibus bill.

Mr Wildman: Yes.

Mr Pagnuelo: What we're going to be saying tomorrow, what Jason will be saying tomorrow, is that in terms of initiative, an omnibus bill would not be permitted under initiative. It has to be very issue-specific, one issue.

Mr Wildman: I would point out that in that particular case, while it was defeated soundly, as you said, across the country, it was narrowly supported in Ontario.

I want to raise two questions, which I guess I have to do delicately because it might be misinterpreted. I hope it won't be. But sometimes in politics, in my experience, and I've been at this business for over 20 years, there are questions that are so divisive for society that perhaps they shouldn't be put in a black-and-white context, for the health of the society. For instance, it's been suggested in another jurisdiction, in British Columbia, that the recent Gitskan land claim should be subject to a referendum rather than be a matter for which governments take responsibility and defend in an election campaign. Do you see any such issues, or are all issues legitimate ones to be put to the majority in a yes or no vote?

Mr Pagnuelo: All issues are legitimate. We would put some restrictions, and Jason again will address those tomorrow, but the most important which we would want to set out here this afternoon would be the fact that there could be no initiative that would contravene the Canadian Constitution or the charter of rights and responsibilities. That's paramount.

You raise a very important issue. There are particular issues out there that can be very divisive. But what do we accomplish by not confronting them and not debating them publicly and openly? Oftentimes we do more damage by pretending they don't exist than by addressing them up front.

Mr Wildman: Don't misunderstand me. I said the choice was not between not confronting them or having a referendum, but rather confronting them through the normal political process and having governments and elected representatives take the responsibility for making decisions and then defending those decisions, not between sweeping them under the rug or having a referendum. There are other choices.

You will be aware, and perhaps this is going to be commented on by your federal or national colleague tomorrow, that the Premier of the province has made a commitment when he ran for election that there would not be tax increases without referenda.

Mr Pagnuelo: I have a signed pledge right here. I bring it everywhere, hoping one day he may respect it.

Mr Wildman: Okay. I suspect that this discussion paper is related to that. I'm sure you do too.

Could I ask you, how does one define taxes? Would you consider user fees to be taxes?

Mr Pagnuelo: As such, no. If you can price a particular government service that is offered and the cost of that service is not borne by all the general electorate, then we would say that that per se is not a tax as such. What really we think of as a tax is more along the lines of a provincial sales tax, the provincial income tax, those sorts of broad taxes, property taxes, property tax reform. Those are the sorts of issues that we would see.

Mr Wildman: That's fair. The reason I raised it is because Mr Harris, when he was the leader of the third party, said user fees are taxes. It's in Hansard.

Mr Pagnuelo: It's another form of government revenue, but it's not as direct in that it doesn't apply to everyone.

Mr Wildman: Right. But for instance, to use an example, the government recently increased or required seniors who are on the provincial drug plan to pay a fee. That doesn't apply to everyone because not everyone is on the provincial drug plan or needs drugs, but it does apply to a lot of seniors in the province. To use the Premier's own definition, that would seem to me to be a tax increase on those people.

1640

Mr Pagnuelo: Some could view it as such. We wouldn't.

Mr Wildman: All right. Thank you. Do you see other issues beyond the ones mentioned in the discussion paper or the pledge that you carry with you that should be subject to both citizen-initiated or government-initiated referenda, such as the privatization of government services?

Mr Pagnuelo: Again, the only restrictions we would place in terms of what types of initiatives could be entertained or what would be prohibited would be anything that falls outside or contravenes the Canadian Charter of Rights and Freedoms, anything that falls outside the powers of the provincial Legislature, anything that appropriates part of the public revenue — in other words, if people wanted to hold a referendum to say, "We're going to spend so much on this," or anything that imposes a tax. Also, we would not see any initiative which constitutes an omnibus bill.

Mr Wildman: Like Bill 26?

Mr Pagnuelo: Yes.

Mr Wildman: My final question is this. If a government, for good policy reasons that it understood and had expressed, determined that a specific service or a number of government services that had previously been delivered by the government itself and had been paid for through the ways governments raise revenue, either through the various taxes or borrowing or whatever in the past, would

now be contracted out to a private firm, perhaps because they feel the service could be delivered better, more efficiently or whatever, and that service now would require a fee to be paid by members of the public who benefit from that service, that would be something that you would consider a legitimate matter that could be subject to the initiation of a referendum?

Mr Pagnuelo: It could be subject to initiative, most definitely. I would like to think, by the way, in that case that where that service was now subject to a particular fee, there would be a corresponding reduction in the tax.

Mr Wildman: I'm sure that will happen.

Mr Pagnuelo: You can't have it both ways.

Mr Hastings: Thank you, Mr Pagnuelo, for coming and making a very cogent presentation of the public state of the mind out there of the voter, particularly referencing cynicism and distrust of our public institutions.

My question relates to page 7 in which you specifically would get around the question of what kind of questions would be raised under referenda: "Do you support...." In paragraph 2 you have "followed by the bill number" etc. Do I take it that from that particular slant that your organization only sees referenda being introduced by government?

Mr Pagnuelo: No. They could be initiated by citizens, by both.

Mr Hastings: If so, and the question got through all the hoops, the 10% of the people who voted in the last provincial election etc, would the same type of question be phrased in the same way in a citizen-driven type of referendum? Would other words have to have been a bill initiated on a corresponding, simultaneous track in the Legislature dealing with that subject or topic?

Mr Pagnuelo: Again, what we're suggesting, as part of the safeguards to ensure there are no frivolous referenda or petitions, is that if an individual in the public is serious about wanting to petition a referendum, then they should come forward with a serious proposal which means actually coming forward with a draft of the legislation which they would want to see introduced and voted on.

What we're proposing is that obviously not everyone out there will have the skills to do that, but they have to come forward with a basic, rough draft and we would see a role played by the chief election officer in assisting that group or individual from there on.

Mr Hastings: In other words, the Legislature itself could be silent on that topic, whatever it might be, in a citizen-initiated type of referendum.

Mr Pagnuelo: Right.

Mr Hastings: It would still have a bill number or designated in a different way, but the same consistent type of phraseology.

Mr Pagnuelo: Absolutely.

Mr Hastings: What are your views with respect to recall of elected officials and how do they differ from Professor Boyer? When he was here, he was talking about —

Mr Pagnuelo: I missed most of his presentation, unfortunately.

Mr Hastings: He essentially dismissed citizen-initiated moves to recall elected officials.

Mr Pagnuelo: There's the question of, if you've got an unpopular politician or if you've got an unpopular political party that is in power, should you have the ability to recall that individual or to actually recall the whole government, if you want? There are many who support that concept. Generally, we feel that the substitute for that is direct democracy, the ability to be able to undo bad legislation, the ability to bring the views of the constituents to the forefront and bypass the politician.

Again, you're looking at essentially a four- to five-year maximum period where that individual's going to be in power and chances are you're going to possibly realize, two years or two and a half years into the individual's mandate, that perhaps they're not what you wanted. But I think many times where a politician becomes highly unpopular within their own constituency, that they'll see fit to perhaps step down in advance of the conclusion of their mandate. It's an issue that finds favour with some. We don't think it's absolutely necessary. Again, we think direct democracy per se makes more sense and alleviates some of the concerns that might rest with not being able to unseat a politician early.

Mr Hastings: Do you see any specific limits or restrictions on how direct democracy would be implemented in a recall initiative that couldn't be done chock-a-block, a vote a day? Would there have to be a very serious deviation from a broad-based platform of the government?

Mr Pagnuelo: Again, you need to ensure that it truly did represent the majority view. So you'd have to have a high threshold to begin with. It's not something which either ourselves or the Canadian Taxpayers Federation are specifically addressing in this particular initiative. What we're looking at more is the issue of referenda and not so much the recall aspect.

Mr Clement: I'll try to be brief, just two questions. Mr Pagnuelo, thank you for being here. The suggestion that the threshold should be 10% of the ballots cast in the last provincial election, we had a suggestion from Mr Boyer that you might want to ensure that they come from a number of different regions in Ontario, two thirds or three quarters of the ridings in the current Legislature. Just to use the 10% example, let's say Mississauga felt very strongly about a particular item on the public policy agenda but no one else thought it was particularly important; you couldn't have Mississauga driving a \$20-million referendum process for the entire province. Is that something that you've thought of here?

1650

Mr Pagnuelo: We've looked at it and where we've decided it would make more sense to have, if you want, a double majority is on the actual vote itself and not on the petition. Again, before someone would undertake and start out on a petition, they'd have to be pretty darned sure, particularly if it's a regional interest they had, that they could sell this on a province-wide basis. Otherwise there's a lot of time and a lot of energy and perhaps a lot of money on their part that would be expended unnecessarily. It can be a long process just to collect the petitions. People have to approach this very seriously. I don't think you'll find many frivolous attempts being made to get things on the petition route.

Mr Clement: Quite so. One thought came to me when you were discussing with my colleague Mr Wildman the potential divisiveness of some questions, and I wanted to know your reaction to my logic: If you took the example of the free trade debate in the 1988 federal election, one of the huge criticisms of the culmination of that debate was that a party that got 40% of the vote was able to implement the policy on free trade and you could make the putative argument that 60% were not in favour of free trade. So in a sense could you make the argument that we are lessening the divisiveness in society by forcing some of these huge public policy issues on the referendum platform where you needed at least 50% of the vote rather than 40% of the vote in order to carry out the policy?

Mr Wildman: Just to be fair, I wouldn't consider free trade to be one of those kinds of issues. It's usually moral questions.

Mr Clement: But even more so in that case where you wouldn't want a 40% elected government deciding on moral issues when through a referendum you needed over 50% to get them passed. Does that make sense?

Mr Pagnuelo: Let me speak to that in perhaps a different way. What happens is, when you've got one very specific issue like that that becomes the central issue in an election campaign, people's attention is diverted off all other issues and so people don't look at what alternative parties would offer in terms of fiscal responsibility or social responsibilities etc. They lose sight of all that and you end up voting for a government either for or against a particular issue and everything else falls by the wayside. Then we end up with governments that we wish we hadn't elected but we brought in because of how we voted on that one issue. That's where I think the current system we have today — as we said earlier, a representative democracy can be enhanced by allowing referendums on very specific, single issues that can inflame voters on both sides of the issue.

But let's keep that outside. Let's make for good elections in terms of how we elect candidates and parties and focus on the broad things that they're offering and not just that one specific issue, to the detriment of everything else.

The Chair: Thank you very much, Mr Pagnuelo, for your advice. We appreciate your input.

REFORM PARTY OF CANADA

The Chair: Our next presenter is Mr Scott Reid, who is representing the Reform Party of Canada as a researcher. Mr Reid, welcome to the committee. Begin when you're ready.

Mr Scott Reid: Thank you. Just so people will know, I'm the senior caucus researcher with the Reform Party caucus in Ottawa. Rather than trying to talk today about the merits of referendums, I've chosen instead to try and focus on the question of trying to make the relevant legislation workable. Rather than trying to deal with all aspects of referendum, there were some 12 different types of referendum legislation that were discussed on pages 19 to 23 of the background materials that I was sent. I've decided it would be more appropriate to (a) try and group

these options, and then (b) focus on the one option that I think is the most important.

The 12 options that were discussed in the background paper are divisible into three categories. The first are referendums to be held at the initiative of the government. The second are referendums to be held at the initiative of the people whenever a significant number of signatures can be gathered on a petition. Thirdly are referendums that are automatically triggered by some sort of event, such as a new law to raise taxes.

Rather than commenting on all of those, I'll just look at the popularly initiated referendums, the so-called initiatives. The reason I do this is that with regard to the first option, referendums to be held at the initiative of the government of Ontario, such referendums have already been held in the past. They can be held again in the future and it's simply a matter of the government making the decision. Whenever the relevant issue comes up, it's time for us to hold a referendum and we need to get the people's opinion. I don't think we need to consider legislation for that at this time.

With regard to mandatory referendums on such things as new tax increases, and I think I may be wrong from the discussion that just went before here, but I made the guess that this committee would not be looking at that question in depth; that would probably be subject to further hearings and of a separate piece of legislation. That was a piece of guesswork on my part. But just in case I was wrong, I wanted to mention three things. I noted these in my notes.

First, I drafted the Reform Party's template tax and expenditure limitation legislation and have a little bit of knowledge on that, so I can answer some questions with regard to that, if need be.

Secondly, I'm in the process of gathering material for a book on the subject and I've got a fairly extensive collection of background material on tax and expenditure limitation laws.

Thirdly, about six months ago I wrote an article for *Gravitas* magazine commenting on specific features that I think should be included in any Ontario legislation on the subject of tax and expenditure limitation. I've attached a copy of that article to the back of the materials that I've given to you.

With regard to citizen-initiated referendum legislation, of course you all know that Ontario, if it were to adopt such legislation, would be the third province to have legislation on its books currently. At one point in the past, all four western provinces had such legislation on their books. It's worthwhile noting that in each case the legislation was intended not to actually make such initiatives possible, but merely to provide the appearance of making them possible while in practice making it so difficult to initiate a referendum through popular petitions that none would take place. These efforts on the parts of governments were successful. There has never been an initiative in Canada at the provincial level.

I get the impression from looking at the documentation that was sent around prior to this meeting that this government feels differently and is very sincere about wanting to actually create a workable piece of legislation.

There are three techniques that I want to concentrate on that can be used to prevent initiative legislation from working while giving the appearance that it's meant to work. So if that's your intention, three things I'm going to say are of relevance. If it's your intention to make it workable, then these are three things you'll want to avoid.

The first is placing unreasonable restrictions on the amount of time that can be devoted to collecting signatures on a petition. The second is a requirement that a minimum number of signatures be gathered in each region of the province, which has the effect of driving up the de facto number of signatures that are needed to an unmanageable level. The third method of making sure that initiatives don't actually ever come off the ground is to set very, very high thresholds for the total number of signatures that must be gathered on a petition.

With regard to time limits, of the 23 states in the United States that permit citizen-initiated referendums, all but six place restrictions on the amount of time during which signatures may be gathered. These periods range from 90 days in Massachusetts to 730 days in Illinois.

1700

Apparently the logic has been of implementing such limits on time to ensure that the number of initiatives will be kept low, but the actual dynamics have been a little different than was anticipated when such limits were put into effect. The tendency is not so much to reduce the number of items that make it to the ballot, but rather to squeeze out grass-roots groups which tend not to be well organized and to have a pre-existing set of institutions in place and to put the signature-gathering process in the hands of interest groups that are well organized.

The best example of how this has happened is California, which has only a 150-day signature-gathering period. Despite the fact that it has a very short period, the third shortest in the US, it has an average of 5.8 questions on the ballot every year, which is of course the largest number in the United States. Significantly, California is the state that is best known for having special-interest groups driving the initiative process.

With regard to regional restrictions on petition-gathering in a number of jurisdictions — and I've listed these. I should mention that at the back of the materials you've got, you'll see a two-page list of various jurisdictions. In some of the American states there are requirements that a certain number of signatures must be gathered in each county in the state or in each electoral district in the state. A very tough example is in the case of Nevada, where at least 5.5% of the population in two thirds of the counties must sign the petition in order for it to be effective.

The ostensible reason for doing this sort of thing is to ensure that you don't get questions of purely regional interest on to the ballot. This is somehow supposed to be a bad thing, and I have two comments to make on that.

The first is that this argument is objectionable. Why is it illegitimate for an issue that falls within provincial competence but is only of interest or is primarily of interest to people in one part of the province not to be brought to the attention of the people of all the province? It's illegitimate for such a measure to be passed into law

if it actually hurts the interests of people in other parts of the province, but if in fact one part of the province has been left out of the process of representative democracy, it has been frozen out of the governing caucus, then it may well be that direct democracy is the only way it can get these issues on to the ballot. Of course we have this situation in Ontario now that once you go north of Parry Sound and North Bay, there are no MPPs in the government caucus, so perhaps this would be an alternative form of representation. A similar comment could be made about western Canada in the last Trudeau administration or of Quebec during the Clark administration, that an initiative would have provided an effective way of voicing their concerns.

Secondly, it seems pretty clear to me that the real function of geographical restrictions is either to make it impossible to get a question on the ballot at all — and I cite as an example in my background material British Columbia's 1919 initiative legislation which required that 10% of signatures be gathered and I think it was three quarters of the constituencies of the province. That was intended to make sure that nothing would ever get on the ballot.

Or sometimes it's put on to make sure that certain regions will be shut out. I offer in the case of Nevada that the goal seems to be to ensure that the two urban counties cannot get anything on to the ballot without the rural counties giving their approval as well. Again, I find that hard to accept as being legitimate.

With regard to the question of overall thresholds, this is the most important question. What percentage of the voting age population should sign a petition in order for it to be valid? I'm somewhat distressed to find that most of what has been written in Canada on this subject is factually incorrect.

When I was involved in the Reform Party's Task Force on Direct Democracy one of my jobs was to try and establish a percentage that would be good for Canada; we eventually settled on 3%. What I discovered in the process of researching the numbers in Switzerland, and particularly in the United States, was that the percentages that are used and cited are very deceiving. There are two reasons for this.

The first is that normally the legislation will state that X per cent of the voters who participated in the previous election for governor, or sometimes for Attorney General or state Supreme Court justices, whatever, some percentage of participating voters must sign the petition. Remember that in the United States, and particularly in state-level elections, the voter participation rate is much lower than it is in Canada. On average it's 50%, and in some cases it's less, whereas here in Canada 70% to 80% is typical. When you set, say, 10% down in the States and then you look at 10% up here, you're really talking about a number which is substantially larger in Canada. It's a much tougher threshold to hit.

Secondly, sometimes these things are discussed in terms of registered voters, what percentage of registered voters ought to be required to sign a petition. Again, voter registration American style is very different from door-to-door enumeration Canadian style. The numbers are much lower in the States and therefore the numbers

appear to be higher than they really are. If we follow their example, based on this we will find that we're setting much tougher thresholds than we intended.

The 3% which the Reform Party has advocated is actually, if you look at the list I've provided, typical for an American state. It's substantially higher than California, where it's 1.9%; that's the lowest in the States; actually Colorado, at 1.8%, is the lowest in the United States. It's higher than it is in Switzerland. It's lower than it is in Illinois and Wyoming, which are the two states cited earlier, at 10%. Should we choose to follow their example, I think we can safely assume that just as Illinois and Wyoming never have initiatives, neither will Ontario.

I don't know how I'm doing for time here. If I've got enough, I'll go on to talk about California. If not, I can cut it off there.

The Chair: You've been speaking for about 15 minutes. Some committee members may have questions.

Mr Reid: Let's go to them.

Mr Bartolucci: Mr Reid, are you saying then that there should be no time limit to the opportunity to gather signatures? What is a preferable time limit, in your estimation?

Mr Reid: As a matter of practice, I think once you get above one year it doesn't really matter whether you have a time limit or not, and that's simply because if you haven't been able to raise the number of signatures in a year, it indicates that you probably don't have the level of popular interest and the organizational support to do it. You can imagine trying to run an election campaign for a year and have volunteers involved. Clearly, that's something that's not workable.

I personally would not put on a limit of any sort, the reason being that one of the processes that happens when petitions are being put together and signatures are being gathered is that these are then submitted to the chief electoral officer, who takes a representative sample and then proceeds to call people up randomly. What will happen is that you'll get a certain number of people who, when they're telephoned, will say either (a) "I don't remember signing that," and their names are stricken off, or (b) have moved and therefore no longer can be considered a valid signature, and those names are struck off. They then take whatever number of false signatures that have been collected, say, 5% or 10%, and they apply it to the whole thing and say: "Okay, you require 100,000 signatures. You've only got 90,000 that are valid. Therefore, the petition fails," or whatever. If you wait a long time and you have signatures that are two or three years old, what would happen is you'd get a high number of negative signatures coming back, so the result would be simply that you'd have to compensate by having a very large number of signatures gathered. It's a self-correcting mechanism.

1710

Mr Bartolucci: With regard to a particular issue for a referendum, should there be any guideline set in legislation to ensure that frivolous ideas will not make it to the referendum stage?

Mr Reid: What we've proposed in the legislation that we've put forward — Ted White will be making a presentation on this tomorrow and I believe he'll have a

copy of his private member's bill available for you to look at. One of the things you will see in there is something we call the Referendum Review Council. This is a judicial body of selected justices taken from the Supreme Court of Canada or the Federal Court of Canada who will sit in an odd-numbered panel and review each proposed piece of legislation as it comes forward, and they will judge it against certain criteria: Is it an omnibus bill? Is it ultra vires or intra vires? Does it contravene in some way the Charter of Rights? If it does not meet with the right criteria, it will be stricken from the ballot and not permitted to go forward.

Mr Wildman: I'm interested in your comments about Nevada. Perhaps I could pose a somewhat hypothetical situation, but there is an example in Ontario. The protection of old-growth forests is a large issue. Some might suggest that many urban people — I don't know whether this is true or not — would be very much in favour of protecting old-growth forests. So conceivably a group could put such a question on the ballot, and yet a particular area of the province would be most affected. In Ontario you might point to Temagami, for instance. Representing an area of northern Ontario, I have often heard the argument put forward by northerners, who are a minority, that they should not have urban people from southern Ontario deciding their fate. It has been suggested in the discussion we've had and in the paper that perhaps in these kinds of situations a double majority should be required. How do you respond to that?

Mr Reid: If there's a case for a double majority, it should be at the far end of the process, when the actual voting is going on. If there are certain issues that you anticipate are likely to be the sort of things where a special majority of some nature is appropriate, one ought to try and classify those in advance. We had to go through this process working at the federal level, as we prepared our own referendum draft legislation, because of course you have certain issues that are simple legislation at the federal level and then you have the question of what's the Reform Party's policy on constitutional amendments? We're in favour of a referendum process on all constitutional amendments, but are we in favour of some form of special majority? We are. Something similar ought to go on at the provincial level where you'd sit down and ask, are there special areas of question that are so important or so sensitive or so regionally sensitive that there ought to be some kind of double majority required?

I suggest that being done at the front end simply because it seems to me when you get to that point, trying to decide whether we should go ahead with a referendum on this issue or that issue, there will always be some group pushing for the double majority, because that's more likely to make it difficult to pass, and another group pushing the other way. You won't have a very honest debate about the whole thing at that point.

Mr Wildman: Wouldn't you be able to avoid that by simply following, perhaps not the Nevada example lock, stock and barrel, but by requiring that, whatever your threshold is, it be a threshold across the province or in a number of regions of the province so that you could not have a situation where people in the greater Toronto area,

for instance, who might be very concerned about a provincial issue, could get something put on a ballot despite the fact that it might not directly affect them in ways that it would affect rural ridings, and yet the rural ridings would not necessarily have as many people?

Mr Reid: I have two comments on that. First of all, when tyranny of the majority exists, it can exercise itself quite effectively via representative institutions as opposed to direct democracy, and so I suspect, if people of the urban areas in Ontario acted either rashly or insensitively towards the rural areas, there's a good chance they would simply do so through our representative institutions.

Mr Wildman: We avoid that in Ontario and in most representative institutions by having rural votes worth more than urban votes. It takes fewer people to elect me than it does to elect a downtown Toronto member.

Mr Reid: I'm outside my area of knowledge when it comes to the breakdown of Ontario ridings, but I think the point can be made at the federal level by observing how during the Clark administration there were only two Tory MPs from Quebec, a very important area of the country and how during the last Trudeau administration there were only two Liberal MPs from western Canada. You had a serious problem, which could have been overcome to some degree, of the government passing insensitive legislation. I'm thinking here of NEP, for example. Had there been a method for those areas most greatly affected, Alberta in particular, and to some degree Saskatchewan, if they had been able to carry out an initiative, get something on to the ballot, bring it to the national attention, I'm not sure what would have happened, but it would not have been worse for national unity than the actual outcome, which was the rise of western separatism at a time in our country when we really couldn't afford that sort of thing.

Mr Wildman: In your experience and research, have you come into contact with a situation which I'm told is developing in some parts of the United States, such as California, where there actually are professional firms that a group can hire to obtain valid signatures to get an initiative on the ballot?

Mr Reid: Yes, I'm very keenly familiar with that. That is more a California problem than anywhere else in the United States, although it does exist to a minor degree everywhere. In the United States, it's legal to pay people

to collect petitions. Some people have talked about banning that practice in Canada, although you've got to be careful when you do that. You have to be able to pay people for their expenses or else the little old ladies and retired people and volunteers who want to go out and help will be forced to pay out of pocket. That's the root of the problem in the States.

The other thing that's very important in California that sets it apart, and this is really a California problem more than anything else, is the fact that all legislation that is passed by initiative in California becomes a de facto constitutional amendment; that is, it cannot be changed, repealed or amended in any way by the Legislature. It must go to another referendum to be changed.

The stakes are very high. I offered the example in the last page of notes of a particular piece of legislation in California that allowed the lotteries, but the legislation was worded in such a way that ensured only one company would qualify to provide the necessary tickets for the lottery, and that company gave 88% of the funds necessary to gather signatures. But that is a very specific problem. They wanted to get that legislation in. Had it come in Ontario, such a situation, what would have happened is that the Legislature would simply have repealed the legislation or changed that section of the legislation, but in California they had to wait several years so they could go back, have a referendum and remove those provisions. Meanwhile, the money was made back by the company.

Mr Wildman: I guess special-interest groups are very adaptable and can adapt even to referendum legislation.

The Chair: Thank you very much for your presentation. That concludes our witness list for today. There are a couple of things I'd like to remind members of.

Mr Clement: What happened to Donn Carr?

The Chair: I'm sorry; he didn't show this afternoon. We start our hearings tomorrow at 9 o'clock sharp. Tomorrow afternoon we're in the Whitney Block, and again I would ask members to refer to the updated agenda for the room. We're going to be in room 5540 in the Whitney Block at 1 o'clock, not the previously indicated room. I want to thank all members for their insights and cooperation today.

The committee adjourned at 1720.

CONTENTS

Monday 9 September 1996

Referenda	M-185
Office of the Chief Election Officer	M-188
Mr Warren Bailie	
Ministry of the Attorney General	M-195
Mr Michel Hélie	
Mr Patrick Boyer	M-203
Ontario Taxpayers Federation	M-218
Mr Paul Pagnuelo	
Reform Party of Canada	M-223
Mr Scott Reid	

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)
*Mr Rick Bartolucci (Sudbury L)
Mr Dave Boushy (Sarnia PC)
Mr David S. Cooke (Windsor-Riverside ND)
*Mr Carl DeFaria (Mississauga East / -Est PC)
*Mr Tom Froese (St Catharines-Brock PC)
*Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
*Mr John Hastings (Etobicoke-Rexdale PC)
*Mr Ron Johnson (Brantford PC)
Mr Frank Miclash (Kenora L)
*Mr Gilles E. Morin (Carleton East / -Est L)
Mr John R. O'Toole (Durham East / -Est PC)
*Mr Tony Silipo (Dovercourt ND)
Mr R. Gary Stewart (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Ms Isabel Basset (St Andrew-St Patrick PC) for Mr Boushy
Mr Marcel Beaubien (Lambton PC) for Mr Stewart
Mr Tony Clement (Brampton South / -Sud PC) for Mr O'Toole
Mr Gerry Phillips (Scarborough-Agincourt L) for Mr Miclash (morning)
Mr Bud Wildman (Algoma ND) for Mr Cooke

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

CA20N
X200
-L20



M-19

M-19

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Tuesday 10 September 1996

Journal des débats (Hansard)

Mardi 10 septembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Tuesday 10 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mardi 10 septembre 1996

The committee met at 0906 in room 151.

REFERENDA

The Chair (Mr Ted Arnott): I call this meeting of the standing committee on the Legislative Assembly to order. We are presently engaged in public hearings discussing the issue of referendums and a paper which was referred to this committee by the provincial government.

We've got quite a tight schedule this morning, committee members, from 9 o'clock until noon, and we've got every witness with a half-hour time slot. Because of that I'm going to be quite strict about trying to keep to the schedule. We have half-hour time slots for each witness, and whatever time is left after the witness's presentation will be divided equally, as best I can, among the three caucuses, and the caucuses will each have an opportunity to speak first in rotation.

ED HARPER

The Chair: Our first witness this morning is Ed Harper, the MP for Simcoe Centre. Welcome to our committee, Mr Harper. We look forward to your presentation.

Mr Ed Harper: Thank you, Mr Chairman. I'm looking forward to giving my presentation. Members of the committee, I'm very pleased to be here this morning, and I do appreciate the opportunity to talk about the need to get our citizens more involved in the process.

Of course, in my party in 1993 political reform was a major plank in our platform, and of course recall, referendum and citizen initiative was indeed a big part of that. From my experience in door-knocking in 1993 for the first time running for office, I was very pleased that I had that as part of my arsenal. I have to tell you, at far too many doors as I went about campaigning, I encountered a level of cynicism that was almost frightening, the attitude that, "Oh, yes, you're another politician who's standing here telling me today what I want to hear, but then you'll go to Ottawa and you'll do exactly as you're told." It was some comfort that I was able to say to that kind of response at the door, "I understand how you feel; however, for myself and my party, we want to give you the mechanism to deal with that," and was able to introduce the recall, referendum and citizen initiative among some of the items in political reform.

Since being elected in 1993, my experience has been that that situation, the need for change, has been reinforced. It certainly hasn't been diminished in any way.

Canadians have changed, and I think we as politicians must react to that change and change also. Just to rein-

force the objective of the committee, which I and my party wholeheartedly endorse, I'd like to give you just a little of the background to the change that's taken place in Canada and help you reinforce your objective to meet your goals of improving government accountability and increased public participation.

In my view, the first indication of the change that had taken place in Canada was the 1990 Meech Lake accord when in fact Meech fell apart. The government of the day realized for the first time that there was a mood of unrest in the country, to the point that the Citizens' Forum on Canada's Future was put together to go across this great country of ours to find out: What is the mood? What is bothering the Canadian people?

In spite of what was in that report, however, we then proceeded to the 1992 Charlottetown referendum, with the result of that referendum being defeated in spite of the fact that we had something that happened for the first time and may never happen again, that the three major political parties supported it and indeed I think most of the major print media were encouraging Canadians to support it. In fact, the Canadian people did not; they rejected it.

The next thing that happened, of course, was the 1993 election where we had the unheard-of turnover of 205 members of Parliament, so there was a very strong message from the Canadian people that they were not happy with government and the leaders of this country.

Peter Newman in his book *The Canadian Revolution* has documented this change that's taken place. He says in there, in "From Deference to Defiance," "We are dealing with a voter who indeed is unhappy and is looking for change." I believe what we're talking about at these hearings is a change that's very much in the right direction.

I said earlier that in 1991 there was the Citizens' Forum on Canada's Future, perhaps better known as the Spicer report. I have a copy of that report with me. I've read it several times, actually, and that report, where Mr Spicer and his commissioners talked to hundreds of thousands of Canadians, in my mind clearly identified what was on the minds of, what was bothering, the Canadian people. However, to this date, much of the information or the advice in that report unfortunately has been ignored by governments.

I just want to quote from the report, if I may. This is on page 96, section 9, dealing with responsible leadership in participatory democracy. It begins: "One of the strongest messages the forum received from participants was that they had lost faith in both the political process and their political leaders. They do not feel that their governments, especially at the federal level, reflect the

will of the people, and they do not feel citizens have the means at the moment to correct this. Many of them, especially outside Quebec, are prepared to advocate and to support substantial changes to the political system if these would result in a responsive and responsible political process and in responsive and responsible political leaders."

Going on, on page 105, under "Direct Citizen Participation," they talk about political reform. "Much of this concern about the need for political reform focuses around the process of constitutional reform, the desire for a more open, public democratic process. But it also extends, with almost equal weight, to other important policies. As noted earlier, changes which provide for a more open, responsive government may diminish the demand for direct citizen participation and decision-making. However, in the absence of such changes, and in some cases in addition to them, a number of mechanisms have been suggested. The two most popular were more use of referendum on major policy issues, and constituent assembly or other ex-parliamentary mechanisms for constitutional reform. Citizen-initiated referendum to make members of Parliament accountable to their constituents would be an excellent check on extravagances."

I'll just finish off my quoting from Mr Spicer's report by going to the very final chapter in his report. This chapter was not written by Mr Spicer or indeed by one of his commissioners. What we have here is a quote by one of the hundreds of thousands of Canadians they interviewed. The quote is: "No hyperbole or political hedge can screen any member of any Legislature who thwarts the will of the people on this matter. The voters are watching and waiting." When I read that, I think those are very prophetic words when you realize that they were published in June 1991. I would suggest to you that to a large degree what was in that report was ignored when we went into the 1993 election, and indeed those words proved to be very true. I think those voters are still watching and waiting and looking for the changes.

If we want trust as politicians, we have to be prepared to give trust to the voter. Let me deal for a moment with the main objections to referendum or citizen initiatives. The first is cost, the second is that the issues are too complex, the third is the danger of heavy advertising and big money monopolizing an issue, and fourth is the frequency of referendum.

Let me deal briefly with cost. Cost is a two-way street, and I'll use as an example the GST. I will tell you I was a supporter of the GST. I think it was a much fairer and a much more equitable tax. However, I think the GST could have been sold. Had the government been faced with a referendum, they would have done a better job on selling that tax. I for one believe it was saleable. But in not having a referendum and in fact forcing that legislation through, it has created an extremely costly backlash in what is known as the underground economy, at whatever estimate you want to put on it; I've heard everything from \$30 billion to \$100 billion. The point here is that there is certainly a cost to referendums, but there can be an extreme cost to no referendum, and I think the GST may very well be an indication of the very high cost in not following that process.

Certainly referendums are costly, but indeed they can be held at the time of elections to minimize costs, and I think the future of electronic voting is just around the corner. There is the technology to do that.

Briefly, dealing with "the issues are too complex," I think there's an assumption there that the voters are not very well informed and that politicians are very well informed. I don't know that either of those statements is accurate. In any event, when you look at the party discipline system in place at the moment, even those members of Parliament who are very well informed in many cases don't have the opportunity to exercise that because they're instructed, because of the party whip or the discipline, that they are going to vote in a certain way.

I think we do a disservice to our voters to suggest that they would not have the ability to understand the issues on the basis that they are too complex. We underestimate the ability of our voters. We underestimate the common sense of the common people.

The third item is the heavy advertising or that it could be captured by big money. I don't think there's really been strong evidence of that. Certainly it's a danger, but I would come back to the Charlottetown accord. As I mentioned, we had the three major parties supporting it, we had the print media all encouraging the Canadian people to vote for it. In the spending by the two campaigns — in the one campaign there was a difference of about 10 to 1 in support of the Charlottetown accord. Yet in spite of that the Canadian people looked at it, understood it in their minds, right or wrong as you may feel, but it was rejected.

Then the fourth is the frequency. I hear this at town hall meetings: Who wants to have government by referendum or a referendum a week? I don't believe that's what you're talking about and it certainly isn't what we would like to see happen in Ottawa. We believe in referendum on the major issues and only those, so we're not dealing with a referendum a week or anything even near that kind of frequency.

I want to leave some time for questions, but in finishing, there were some questions posed, and I have noted some comments to those questions. "Should referenda be permitted on a broad and unrestricted range of public policy issues?" I believe that indeed they should be. Also part of that question is the question of recall, and that is part of our platform. We believe there is a place for recall.

"Who should decide whether a referendum will be held?" We believe that should be in the hands of both the legislatures and the citizens. We believe that both should be able to bring forward referendum.

"Should a referendum be held in conjunction with a provincial or a municipal election?" I think that certainly would be appropriate in the interest of keeping costs down.

"Does the experience of other jurisdictions show that campaign spending or advertising affects the outcome of referenda?" To my mind, there is no conclusive evidence that that is the case, and again I come back to the Charlottetown referendum as rebuttal to that.

"How do we ensure that ballot questions and results do not offend the Constitution?" There is a suggestion there that the court should be involved in the wording of the question. I don't believe that should be the case. I think the courts are in place to interpret whatever legislation might result from that. I think the onus should be on those who have posed the question or prepared the legislation that it will withstand subsequent court challenges.

Those are just a few of the questions I have highlighted. You are going to be hearing later today, I see on the agenda, from our critic in this area, Ted White, the MP from North Vancouver; he's our direct democracy critic. He will be going into more detail on some of the answers to those questions, and he's going to be in a position to relate the BC experience with their legislation dealing with referenda and citizen initiatives.

0920

In closing, I wish you good luck with your deliberations and consultation. I think it's extremely important in Canada's future. I don't see referendum and citizen initiatives taking away from the democratic process; I think they can be worked together to make a much more democratic process that all citizens can take part in. I believe that's what's happening, not only in Canada but, as I suggested, it's happening right around the world. I think you're on the right track, and I wish you well with it. Thank you very much for your time.

The Chair: Thank you very much, Mr Harper. We have about five minutes per caucus. I would ask for the members' cooperation in helping stick to the schedule.

Mr Gerry Phillips (Scarborough-Agincourt): Thank you, Mr Harper. My experience is that the public generically say that referendums are good, without perhaps knowing the detail of the legislation. I'm trying to get an idea from you on how you see framing the legislation. I think you've indicated that you believe the use of referendums should be for cases of major policy decision — I may be paraphrasing you there — but there are others who would argue that it should be used perhaps for other more detailed areas; for example, that if a government plans to take tobacco tax or any tax up, that should be subject to a referendum. You've got this range of opinion, from using the referendum on what some might regard as detail — like if we want to take sales tax up on tobacco or on gas, that must be subject to a binding referendum — to using it where a government plans a major initiative. I think you used the GST and constitutional amendments as your examples.

Where would you fall in your advice to us on whether we should require the referendum on specific items like tax increases? Is that something you would recommend we incorporate, or should we have it a more broadly defined piece of legislation?

Mr Harper: We would like to see the legislation try to limit how broadly this will be used. As I said, I think the legislation has to be drafted in such a way that it will deal with the major issues. I realize that has to be defined. But if you get into peripheral or smaller issues, I think you would find that you would have difficulty getting the support required in the case of a citizen initiative, which of course would be a little different from government-initiated. In government-legislated referen-

dum, there could be guidelines drawn that would clearly define the parameters, and in our view it would be the major issues: major tax increases — as I said, the GST; or moral issues such as capital punishment. As a party, we are on record as saying we would support, if elected, a binding referendum on the issue of capital punishment.

Mr Phillips: One of the things that the government, that I guess the Premier himself, is extremely worried about is what he calls "well-financed and politically able special-interest groups that have been able to have their narrow interests translated into public policy." Should we be careful about making sure the legislation deals with these well-financed, politically able narrow-interest groups, that they not hijack a referendum with their well-financed, politically able skills? Should the legislation deal with that?

Mr Harper: I think the legislation should be aware that the danger is there and have some mechanism to deal with it. I'm thinking of the ability, in California I think it is, where you can buy signatures. I think that's something that should be covered. I don't think that should be allowed.

Mr Phillips: What about spending limits?

Mr Harper: We would not be in favour of spending limits, but such things as going outside and buying signatures we think should be legislated against. But I come back to the fact that no matter how well-heeled the lobby group may be, you still would have a difficult job selling a bad idea.

Mr Phillips: But I gather that these well-heeled groups have been successful selling bad ideas in the past.

Mr Harper: There have been some well-financed election campaigns that have not worked out very well, depending on your interpretation of the outcome.

There is a danger there, but I think the real danger is reacting to that and not putting enough confidence in the ability of the voters to see through it. Sometimes overspending can work against an issue. People can see a lot of money being thrown at it by a special-interest group, and it becomes obvious and it works against what they're trying to achieve.

Mr Tony Silipo (Dovercourt): Mr Harper, thank you for your presentation. There are a couple of areas I wanted to pursue. One was this area that Mr Phillips and you have just been discussing around how we go about defining, particularly in this legislative framework, the question of major issues. Are you of the view that what we should be doing in this legislation is setting out a framework that says, "This is how referenda would be held"? What do we say about the areas? How do we go about defining major issues, or do we just find a catchphrase that is the equivalent of major issues and then leave to the Legislature, to the government, the decision about what constitutes major issues?

I go back to your example. I'd agree with you that introducing a tax like the GST is a major change in a tax system and therefore certainly something that one ought to contemplate as a possibility for a referendum. I would not, on the other hand, feel that a government thinking it has to increase existing provincial taxes or federal taxes by 1%, 2% or 3% necessarily constitutes a major issue in the same kind of range.

How do you go about defining those in a legislative framework like this, from your perspective?

Mr Harper: That is going to be a difficult question to deal with. But I do think there has to be some kind of framework to identify what is broadly described as major legislation. I think the citizens' initiative would cover off, if that were available, what the government might decide is minor. So that avenue would be open. If the public did not agree with the government's interpretation of what is major legislation, the citizens' initiative would give them the ability to introduce that on their own. I don't feel we can legislate in that area. But certainly as far as governments are concerned, I think they have to come up with some kind of framework. I don't suggest that's easy, but I do think it has to be defined a little better than just an all-encompassing statement.

Mr Silipo: I wonder if I can go perhaps a little beyond the framework of what we've been discussing and what you've been talking about this morning. I can't resist, having a federal member from the Reform Party here, asking this question, given that the premise for your presentation, as I understood it, is based on greater accountability to the public and hence greater democracy.

I'm a bit puzzled about what your position or that of your party is on another issue that I think would go a long way towards making the whole system we have more democratic, and that is the whole question of proportional representation. I look at the results of the last election and see that the Reform Party and the Conservative Party got roughly the same percentage of vote across the country, and we obviously know that the representation in Parliament is very different because of the system we have now. What's your view on that as a system of improving the level of democracy, whether it would be done as straight proportional representation or a mixed system? There are lots of models, as I'm sure you're aware, across the world.

Mr Harper: I personally think there is a place for proportional representation. I've looked at it. My party has not debated it and we do not have a party position on it, but I feel there is merit. As you pointed out, in the last federal election there was an enormous discrepancy. Whether it goes all that way or a mix of the two — but yes, in the interest of better representation, there's a very strong argument to be made for that. I personally have been looking at it. I believe New Zealand is experimenting with a mix of the two.

Mr Silipo: Germany has had that system for some time.

Mr Harper: I think it makes a lot of sense and I personally would support something in that area.

Mr Bill Grimmett (Muskoka-Georgian Bay): Mr Harper, you mentioned that at times we underestimate the common sense of the common people. Yesterday, we had comments from both the chief election person for Ontario and from Patrick Boyer. They seemed to take different views on the issue of whether the public would be best served by piggybacking the referendums on general elections. Do you have any concern that the public may not be able to deal with the general issues in a general election and the specific issues on a referendum in the same election?

Mr Harper: Thank you for the question. No, I don't. I think the voters would be quite capable of dealing with that. I wouldn't suggest that we could handle too many questions in terms of the ballot on the referendum. Whether it be kept to one or two — but certainly in that range, the public would be very capable of dealing with both issues, and hopefully it would encourage a better voter turnout than we experience in some of our elections.

0930

Mr Tony Clement (Brampton South): Thank you, Mr Harper, for joining us today. I just want to elaborate a little on the whole discussion of special interests, because that has so far been a prime topic at these committee hearings. Of course, one party's special interest is another party's advocate for social justice, so we could argue till the cows come home about who has special interests and what have you, and I don't intend to get into that.

But one idea that has been floating around that was heard yesterday — of course special interests, I suppose, will always be there, no matter what sort of democratic system you want to create, but is there an advantage, at least in a referendum context, to having the special interests duke it out in the court of public opinion rather than behind the closed doors of the Legislature? Is that one of the advantages you see?

Mr Harper: Yes, absolutely.

Mr Silipo: We could open the doors here, Mr Clement.

Mr Clement: We wouldn't have the benefit of this fine air-conditioning if we did that.

Mr Silipo: Could we have that one framed, please?

Mr Clement: It's a metaphor.

Mr Harper: Well, there's the tyranny of the special-interest groups and the tyranny of the majorities. But I think that would be one of the benefits of the legislation. It would be out in the open so that indeed the public could see and have an opportunity to participate in it. I think there's a line here that we have to be careful of, certainly of the tyranny of the majorities, but it has been said that up until this point there's been the tyranny of the special-interest groups, that a small group had dictated to the majority of our people. I think this legislation — referendum, citizens' initiative — would be a way of avoiding that and striking a far better balance than we've got under the present system.

Mr Clement: On the question of recall, what's your party's position in terms of what the thresholds would be, how it would actually, mechanically, work?

Mr Harper: We did have a private member's bill that was introduced in the House. The threshold we established for that bill was 50% plus one of the voters who participated in the previous federal election. We also stipulated that it could be used only once during the term of office. Another requirement was that it would not be invoked short of 18 months so that the member would have an opportunity to establish his or her credentials, with the one exception to that being if the member had blatantly misrepresented himself or herself. That would be the only exception to the 18-month provision.

Those are some of the safeguards that we want to build in. We didn't want it used in a frivolous way. So with those qualifiers, the private member's bill was debated and voted on in the House and it was defeated, unfortunately.

The Chair: Thank you, Mr Harper, for your presentation today. We certainly appreciate your advice. We will consider it in the context of our discussions.

Mr Harper: Thank you very much for allowing me to be here. I appreciate it.

The Chair: I want to draw to committee members' attention a paper that has been circulated by the clerk, which was prepared very quickly by our research staff. I want to thank them for working so hard to make this available to us in response to committee members' questions of yesterday. There'll be more detailed information forthcoming on Thursday.

BRAMPTON TAXPAYERS COALITION

The Chair: Our next presenter is Mr Ernest McDonald, who is representing the Brampton Taxpayers Coalition. Welcome, Mr McDonald.

Mr Ernest McDonald: Mr Chairman and members of the standing committee, thank you very much for the opportunity of presenting to you this afternoon, or this morning. Pardon me. I've been here some three hours this morning and I make the assumption that the whole day has gone by.

The Chair: You know you have half an hour to make your presentation.

Mr McDonald: Fair enough; thank you. I'll read my report, if I may, and I apologize for the fact that I do not have copies. Such was the shortness of notice given to me yesterday that I wasn't able to prepare that or get it typed. I can and will get the report typed and ready for you, if you so wish.

For too many years in this country of ours, there's been a wide disparity between what Canadians want done and what governments do to Canadians. The schizophrenic split between actions needed and actions initiated has developed and accelerated to the point where real crises, fiscal as well as social, if not already upon us, are waiting just around the corner. A number of economic and social observations are in order and should be made.

(1) In this country we are spending and have spent well beyond our means — in Canada and Ontario.

(2) We must reverse our fiscal irresponsibility and suffer in the process, somewhat now or even more so later.

(3) Taxation has become the heaviest drain on the average Canadian taxpayer.

(4) There is a growing fear of big government on the part of our citizens far and wide in this country.

(5) There is an even larger, growing fear of taxation.

(6) There is seemingly no end in sight to governments spending, particularly federal.

(7) We have developed into an adversarial society where the black market economy, estimated at anywhere between 15% and 25% of the gross national product, has dictated that simple honesty and a sense of civic responsibility have been replaced by a tax avoidance war.

(8) We have become a less caring society. It's no secret that the biggest contributor to Canadians being less charitable than Americans is our antipathy towards the "we'll do it all for you" social welfare state that exists in Canada.

(9) We have developed into two classes in this country: the governors and the governed.

(10) Finally, we have gone too far down the road to becoming a top-down, as opposed to a bottom-up, society. This question should be foremost in each and every one of our minds: Why should tax freedom day come some time in August every year in this country?

There's a rage in the minds of Canadians in reaction to the mess into which this country has evolved socially, fiscally and politically. No intelligent Canadian can recall ever having been consulted and, as a result, giving permission to go into debt, destroying the present and mortgaging the future, to enable a transient, inflated standard of living. Some questions come to mind:

Why weren't we asked? What level of debt, if any, are you prepared to assume? Why weren't we informed or educated? These will be the fiscal and social consequences of going into a particular debt level. Why were we patronized, as in, elected government officials really do know what you want and what is best for you?

Why do we have no laws to limit or eliminate debt in this country, laws that dictate that the government may not go into debt on behalf of the people? Failure to comply implies the downfall of the government in a subsequent election.

0940

Taxpayers' groups in the region of Peel are pleased then that the discussion paper *Your Ontario, Your Choice: A Preliminary Look at the Referendum Alternative* has been released. We believe that a consultative process will do much to assuage the hostility, resentment and apathy alluded to in the 10 points above.

The use of referenda will make government accountable to all Ontario citizens, rather than pander to the special-interest groups or just those who voted for the party in power. It will enfranchise the citizen who has too long been marginalized by autocratic, governmental decision-making, or at least the perception that that happens, and encourage more citizen participation in the democratic process. Nothing motivates citizens more than believing that what they have to say is important and matters to their representatives.

Referenda are superior to polls, less subject to bias and bungling, and reassuring to the public in that everyone is in the population sample.

MPPs would still be necessary, although their role descriptions might change somewhat. Referendum direction must be translated into policy, and policy into action.

Carefully worded, binding referenda would leave less to interpretation and alleviate the need for non-productive adversarial posturing, too often associated with the Legislature.

Referenda may be expensive. This implies that you will have to look at telephone, computer and media technology. You must take advantage of municipal elections and tap popular support for a wide range of

topics at any one time. They must be carefully worded, free of manipulation and constructed on a contingency basis, taking relevant factors into account when decisions are to be formulated.

We do not believe that voter turnout would be a problem for the government. Provided that a practical means of presenting referenda was effected, voters are motivated to take part in a process where they believe they'll make a difference.

We would hope too that the success with referenda, and we believe you would be successful with it, would lead to consideration of both initiative and recall, both essential cornerstones of a consultative process.

In summary, we would comment that it's about time, it's about right and certainly seems to be evidence that common sense for common people seems ready to start moving forward in Ontario. Reform is long overdue. I wish you well in your deliberations and success in the plans that have been outlined in the document.

The Chair: Thank you very much, Mr McDonald. We have considerable time for questions in this round. I look to Mr Silipo to lead off.

Mr Silipo: Thank you very much, Mr McDonald. I guess your group would be one of those special-interest groups that the government talks to us about.

Mr McDonald: I think Mr Clement phrased it quite well: Social justice on one side is a special-interest group on the other.

Mr Silipo: I see. That's how you define it.

Mr McDonald: Depending on which side you're coming from.

Mr Silipo: So if you're advocating social justice, you're a special-interest group and that's negative; if you're advocating tax fairness, that's okay.

Mr McDonald: I take it for granted there's no sense of sarcasm in the social justice comment, that in fact I do believe in social justice.

Mr Silipo: I do too, and that's why I make the point that I really was only half-joking. In fact, there is a bit of a danger, I would suggest, in even getting into that old discussion around special-interest groups, because what to me it really means is that there are groups of people coming together to advocate for particular things, as you are doing, as your organization is doing, and I think that's actually a good healthy sign of a democracy when people are doing that. The only thing I would say is necessary is to make sure that it's all happening aboveboard. As long as that's the case and everybody knows, then what's the harm? In fact, I think a lot of good can come from it.

It's obvious that during these hearings we're going to hear from a number of groups similar to yours who have serious concerns about the way in which the taxation system works and the whole emphasis on wanting government to spend less, and that's fair. Whether we agree or disagree with those perspectives, I think it's fair that we hear those points of view.

I want to pursue that a little bit more. Here what we are dealing with as a committee and eventually as a Legislature is the potential establishment of a law around referenda, presumably one that would go beyond covering

the issues that might be of primary concern to the members of your coalition.

I would ask you a similar question that I asked Mr Harper earlier, which is, how do we go about, in legislation, from your perspective, defining the framework under which referenda would be functioning? Do we spell out in the legislation the kinds of issues or the kinds of things that should be open for referenda, or is that basically a judgement call for the Legislature on the one hand to make, or by citizens' groups on the other, if we are to have citizen-initiated referenda? Again I think there's merit for both of those existing. I'm agreeing with the basic principle and approach that is being looked at here, but I'm quite wary of how we would go about setting that out in the legislative framework. I'd appreciate very much your thoughts on that.

Mr McDonald: I think any attempt by any group that comes before this standing committee is fraught with danger when they wade into the waters of how you'd go about establishing what are the major philosophical tenets that had to be considered and what comes forth before the people for their consideration.

I believe it would be left to the judgement of this government, made up of a number of parties, to decide on what are major issues, and certainly you seem to be prepared to do that in the Legislature, heaving to and fro on your perceptions and beliefs and values when it comes to those major tenets. Certainly, it would appear that each and every party in Queen's Park is prepared or able to make some perception or make some decision as to what the major issues are.

I would suspect that the government should issue what I would call the broad strokes of legislation to be considered and leave it to the people to decide on those issues, the fine points to be filled in by the members of the Legislature. No further comment on that.

Mr Silipo: That's fair. I understand what you're saying with respect to the legislation. Moving from that to the actual application of referenda, would you be of the view that an increase in provincial taxes is something that should be subject to a referenda?

Mr McDonald: You recall that I indicated that referenda should be put forth on a contingency basis, depending on what your definition of an increase is, whether it's large, small or what have you, but I think it should take into account and, as I said, be carefully worded: "Given that the following conditions might obtain in the province of Ontario, would you be in favour of a tax increase of such-and-such?"

Again, I would make the condition that the population should be educated. These are the consequences of us going into that kind of debt level in this country, and we have not been consulted at any point in the past that I can recall.

Mr Silipo: So could I conclude from that that you would also want to make sure that if there were going to be tax decreases people also understood the implications that come from that in terms of the effect on services?

Mr McDonald: Yes. But I would caution the people to take into account the platform of the group that was presenting this kind of information to the public, that this is what a particular group might believe, when they're

presenting to a population, a decrease or a rollback in salaries, for instance, in public service might have implications for.

Mr Silipo: But that presumably would apply on the first issue as well, in terms of taking into account which group is advocating —

Mr McDonald: For sure. I agree with that.

Mr Silipo: How do we balance the appropriateness of using referendums to deal with those issues as opposed to using elections to deal with those issues, in election campaigns in which political parties are clear about their positions and the reasons for those positions?

Mr McDonald: I'm uncomfortable with the idea that a government should be put into place and make the assumption that they would know what the will of the people is for, say, a four- or five-year period. I think you're going to have to come up with some framework that takes a look at timeliness, appropriateness of topic and taking into account the ease with which you could use municipal elections or other agenda coming before the public and make good use of them. But from time to time, I think you're going to have to consult with the public more often than you do and not make assumptions.

I'm well aware that the public might be viewed as just as fickle as what the perceptions of MPPs might be at any one particular time, but I do think the democratic process has to be put into place. I recognize too that it might be somewhat expensive, but I think well worth it.

Mr Tom Froese (St Catharines-Brock): Thank you very much, Mr McDonald, for coming this morning. You had indicated that in your opinion the need for referendum is because governments say one thing to get elected and do another thing when they are elected. You agree and I totally agree with you that there needs to be greater accountability and responsibility to the public at large who elect them.

Mr Silipo talked about, and you responded in a general sense, what items should be on a referendum. Right now we're very concerned and we campaigned as well on issues like tax increases, being more accountable and responsible.

In your opinion, in a referendum, should they just be major issues? Could you give us a little bit more input on what other issues there might be that a government of the day could call a referendum on? Do you feel there should be more than just major issues?

0950

Mr McDonald: I can't think of anything more important to the average Ontario citizen right now than the use of his or her money as it's spent by government, whether that be provincial or federal, so certainly anything having to do with the finances or how well-heeled any particular citizen is as a result of what they may perceive as gouging or simply excessive taxation. That certainly comes to mind, that finances have to be a major issue in the mind of the voter.

I feel reasonably comfortable resting on the intelligence of the members sitting around this standing committee that they would have a good grasp of what would be a major issue for the people to consider. Certainly those will come up during election campaigns. They'll be made apparent to every person who is running

in a campaign, and that should be forwarded to the people who are in the business of putting a structure on these referenda, putting it out to the people.

Mr Froese: The question was asked earlier to Mr Harper as well. Do you feel that referendum questions could be handled at the time of federal elections, provincial elections or municipal elections? Do you feel that people could respond and would be well educated enough to vote on specific items as well as general election items?

Mr McDonald: The short answer to that question is yes, I really do believe that. I don't think our population is overwhelmed by the number of considerations they take into account when they make an election in the first place, and I suspect every one of the questions you would have on a referendum is likely broiling in the mind of the taxpayer or the citizen or the voter as he or she goes about the business of electing the MPP in the first place. Those questions are all in place, and by that one single vote they are in effect giving support to a wide range of topics that exist, or at least they perceive to exist in their minds, when they're supporting you. And yes, I do have a tremendous amount of respect for the common sense of the common people.

Mr Clement: Thank you very much, Mr McDonald, for appearing before our committee. I might add that in Brampton we have no special interests, only very concerned citizens —

Mr McDonald: As I see it, Mr Clement.

Mr Clement: — so it's good to have a fellow Bramptonian here.

I hope I'm not getting too ethereal by asking this question, but you had drawn a distinction in your remarks as to how our society has been divided into the electors and the elected. That was something that was referenced, maybe not in those exact words, in the discussion paper, that that is part of the decline of the legitimacy of our public political institutions.

I wanted to draw you out on this. Is it your view that it is possible that by seeking to push down some of the power to the electors through this mechanism, if we are successful in doing so, could that be a way of in one sense perhaps limiting the role of special interests? Could it be that special-interest groups or pressure groups or interest groups — I'm trying to use terms that are not pejorative, but groups of citizens coming together to try to mobilize support, could that have been a function of all of the power being in the hands of legislatures that seemingly did not care about what the electors thought were the big issues of the day rather than what the legislators thought were the big issues of the day? By driving the power back down, could we in a sense be de-emphasizing the need for special-interest groups?

Mr McDonald: I think you would certainly have an effect upon them, Mr Clement, and I would also point out that I think to the greatest degree possible there should be a wide sharing of all the information that comes to bear on the questions that the population would be considering.

I would think — Mr Silipo has referred to the special-interest groups here before — that there would be a widening number of whatever you would want to call

special-interest groups to the point where they would be somewhat disparate and approach, I suppose, the possibility of one vote, one citizen, with each and every one of us being able to make his or her contribution to the process.

I would point out too that you should be applauded for the concept of pushing down this empowerment to the people as opposed to waiting for some group to come along and grab or claw it back, that being extremely important to each citizen who wants to take part in the democratic process. I don't know that I can give the fine points to the question you ask.

Mr Clement: I'm just thinking out loud here. Do you think that special-interest groups could be a symptom rather than a cause and that perhaps the real problem is political and media élites that have been controlling the system a little bit too much?

Mr McDonald: To the degree that some élites believe that they do indeed control — Mr Harper, I think, spoke very well to the Charlottetown accord effect where in fact there were some well-heeled groups that had financed what they believed to be a successful campaign for whatever their agenda was. I'm sure they must have been extremely surprised when the Canadian people — and I think by definition the Canadian people are right — decided otherwise. In fact we need not fear these well-heeled, so-called powerful groups.

Mr Rick Bartolucci (Sudbury): Thanks, Mr McDonald, for your presentation. Your views certainly are abundantly clear and make a great deal of sense. Let's talk about thresholds for a second, because that's important as well. What do you think the threshold should be before a referendum is held? What percentage?

Mr McDonald: I'd like to perhaps go into some overlapping between what I believe is really important here, not just referendum but initiative and recall as well. I believe that any major issue brought forth by 10% of the population is certainly indicative that something is stirring in this country or this province and needs to be addressed.

Mr Bartolucci: That 10%, should it reflect geographical areas or should it be unrestricted?

Mr McDonald: Again, we're looking at the dangers of a concern coming from any particular part of this province, and I suppose to the degree that a concern has been made by 10% of the people, it should not matter where it comes from. That's a large chunk of our population, and surely each of our citizens is as important as the other. To the degree that we think we have something we should be afraid of, I suppose we could have those fears somewhat assuaged by the fact that the rest of the people are going to have a say or a vote on this referendum and either vote it down, vote it up or sideline it.

Mr Bartolucci: Several people have spoken about the types of issues that should come forward. For each referendum, a cost was quoted yesterday. Do you know what Mr Bailie said was the average cost of a referendum held in the province of Ontario?

Mr McDonald: I honestly don't know what the cost of a referendum held in the province of Ontario would be, but I suppose it would not be any more costly than a

number of fiascos that have taken place in previous administrations of government in this province before. Perhaps the health cards that have gone astray in this province might be an example. There are other examples in other parties as well.

Mr Bartolucci: It's \$40 million. I would suggest that if we were to make wise use of our dollars, it would be very, very important to ensure, as Professor Boyer indicated, that it be of transcending provincial importance when we deal with an item. You're suggesting that any issue should be brought forward?

Mr McDonald: No, sir, I am not suggesting that any issue should be brought forward, but I am suggesting that any issue could be brought forward should the people so decide. I would also like to point out that \$40 million is not a lot of money compared to, say, being \$100 billion in debt.

Mr Bartolucci: If you do it 10 times a term, it is a lot of money.

1000

Mr Phillips: Just to go on record, we in the party think \$40 million is a lot of money.

Mr McDonald: I wouldn't want to be quoted as saying \$40 million isn't. It's a relative thing, Mr Phillips, and I wasn't sure that you understand —

Mr Phillips: On recall, I gather from Mr Clement's comments that the government is serious about incorporating recall in this. I'm interested in the threshold there too in that I can recall, with all due respect to Mr Silipo, that during the last government, had there been recall, it is possible that in Mr Rae's riding somebody may have initiated something, and I could see in the future that happening. With any government, what would be your threshold for recall of a member?

Mr McDonald: Fifty per cent plus one of the eligible voters in the riding in the last election.

Mr Phillips: Of the eligible voters.

Mr McDonald: Yes. It's not much different from the answer that Mr Harper gave.

Mr Phillips: I think he said of those who voted in the previous election.

Mr McDonald: I understand he said that. I perhaps made it a little bit wider.

Mr Phillips: So it could, I gather, mean that you could have during the life of a government a Premier recalled, and for all intents and purposes a government could fall on that basis, but that would be your recall option.

Mr McDonald: I don't know that the government would fall because a Premier had been recalled, but I don't know why you would treat one MPP differently from another.

Mr Phillips: Okay. I just wanted to be sure. So 50% plus one of the eligible voters for recall.

Mr McDonald: I support that.

The Chair: Thank you very much, Mr McDonald, for your presentation. We appreciate it very much.

PARIS GARDOS

The Chair: Our next witness is Mr Paris Gardos. Welcome, Mr Gardos. You have half an hour for your presentation.

Mr Paris Gardos: I would like to begin by thanking the clerk of the committee for her help in booking my time. She was extremely courteous and I think that's a testament to the good people in the precinct and in the blocks around Queen's Park. I think they're good bureaucrats.

I hope everybody has gotten a copy of my sort-of/sort-of-not brief. My presentation is going to be hopefully divided into three five-minute blocks.

I'd first like to address the consultation paper that was issued. I believe that if referendums are to be held — and I am in favour of the idea of referendums; I am only a grade 13 high school student, but none the less — the referendum must be simple to understand. Therefore I really don't think that any technical or regulatory matters ought to be included in the guise of referendums and for the people to vote upon.

In a sense, I believe the Legislative Assembly and the government must have the final say about when a referendum happens. This way the lawmaking bodies that we have will determine when votes happen, although resolutions, perhaps presented through constituents as a petition, could serve — perhaps many MPPs might present petitions as they do presently and that could serve as the basis for a resolution which might turn into a referendum under whatever proposed law was eventually passed.

I don't believe there should be any mandatory referendums on subjects like tax reduction or tax increases or deficit reduction, or debt reduction for that matter, or that they should be within time frames. Perhaps they can be included in the guise of municipal elections or provincial elections because naturally, considering the cost of these sorts of things, it might just be easier to piggyback them from the perspective that it'll save money in the long term. But when you have mandatory or specific time frames, you limit the movement of the Legislative Assembly and the government in dealing with public policy. Supposedly we elect our politicians to do a job, so I think that we may as well permit them to do it.

I would prefer to follow the Quebec method, as is outlined in my sort-of/sort-of-not brief, where it's simply 50% plus one of the population determines whether something fails or passes. The results could be potentially codified in a resolution or a law to start off with, so that the individual MPP or the Premier might present a bill dealing with a particular subject and it would be passed and therefore at that point submitted to the people for referendum.

I prefer the plebiscite option as opposed to a binding referendum because moral suasion on government can be an antidote to reckless actions.

Campaign spending must be similar to elections, because simplification in this matter is the key to participation. If you end up having bizarre rules or no rules at all, it simply ends up being difficult for people to understand and impossible for people to participate.

I don't agree with the idea of initiatives. It simply creates a human rights and political and legal vacuum on issues because particular — I guess we could call them interest groups; it seems to be a bit of a difficult word that we're using around this table. But it can end up that

there will be too many citizen initiatives, and that would simply create more apathy and more disappointments with the political process.

As I said before, a resolution and petition method through the Legislative Assembly from a private member could reach a referendum in the same time frame and potentially bring about a result, without having the citizens just sort of push, push, push.

It can end up being very difficult because what you would have is — for example, within the United States many jurisdictions have had citizen initiatives dealing with, for example, rights for homosexuals which, although it's a very dicey moral and political matter, rights of individual citizens and citizen groups have been rolled back by "the will of the majority." So that must be an issue that is dealt with in any piece of legislation.

Lastly, and considering the costs of these things, we must avoid corporate involvement in these sorts of things. Similar to the premiers' conference that happened in Jasper, I don't really want to have vests with Nikon Camera or computer companies, vested interest groups who could potentially sway the result, influencing voters directly. They can of course financially support these people, but direct, visible support I don't think is on.

I'm also concerned about the automatization aspect of phone-in ballots. It can create a serious threat and end up having phoney results. I think there was a major problem with the Nova Scotia Liberals when they elected Dr John Savage to be leader. It ended up being quite a fiasco, so I don't think that's quite a good option.

The second point I have — I'm going to try to move through this a little bit faster — is that it's valuable to examine the historical context in which referendums in Ontario have been held. There are two very different types that I'd like to look at. After the 1919 plebiscite that endorsed Prohibition, the United Farmers of Ontario government, under Attorney General Raney, brought in the Ontario Temperance Act. Then in 1921 another plebiscite endorsed the banning of the importation of liquor. By 1924, cracks had emerged with bootleg-like liquor and pharmacy liquor stores.

Professor Peter White wrote a very interesting book in 1977 — he was a professor at York; I think he still is — entitled *G. Howard Ferguson, Ontario Tory* and I'd just like to read two interesting quotes from it. I've been reading the book recently.

"In 1920-21, for example, there were 588,000 prescriptions" — this is for liquor — "and in 1923-24, 810,000. On the 15th of December, 1924, the dispensaries issued \$22,000 worth of business and on December 23, \$55,000 worth. But on December 26, the epidemic had so subsided that only \$11,000 was sold."

That was laughed at, and Attorney General Nickle, Ferguson's Attorney General at the time, responded that the OTA was debasing the medical profession and the druggists, that "Not one doctor, but a score of doctors have come to me and said, 'Cannot something be done to lift from our shoulders the iniquity of being the bartenders of the province?'"

Ferguson's response to this was that he dodged the thorny issue in a sense and decided to hold a plebiscite on the subject of eliminating the Ontario Temperance Act

in October 1924. He posed two questions: "Are you in favour of the OTA?" and "Are you in favour of sales of beer by the glass?" The result was a narrow victory for the dry forces around the province and, on the other hand, for beer by the glass.

What was interesting was that Ferguson ended up "virtually insisting that by all canons of democracy the rural folk, who it was said frequently resorted to stills and home brews even as they cast their dry ballots, must not be allowed to impose their will upon the great cities of Ontario. The urban wets were in no mood to meekly accept such dictation. In the middle, in imminent danger of being crushed, was the clever author of the clever plebiscite legislation which had so utterly failed — Mr Ferguson." So it ended up being a bit of a political dodge.

1010

The end result was that Mr Ferguson, in another shrewd move, decided to implement another historical aspect, the "non-intoxicating 4.4% brew" dubbed Fergie's foam. The risk is that it can end up being a political dodge.

The next case is Premier Mitchell Hepburn and the December 1936 Hastings East by-election. Although the bill passed in the spring 1936 session to force more corporations to divide their taxes on the basis of Roman Catholic and Protestant shareholders, most found it unenforceable. There were too many loopholes. During the summer of 1936 the Tories passed convention resolutions — that was the same convention that elected Earl Rowe — that demanded the repeal of the bill. The true test came during the by-election in perhaps an unfair fight in Hastings East, still largely Protestant and untouched by the 20th century in 1936. In spite of George Drew's infamous playing field speech in which he cited that French Canadians were a defeated race, it clearly didn't influence his political career, because he got into the Premier's seat, but it's remembered among historians in the Ontario perspective.

There's another quote from a book done by Professor John Saywell, another York University professor, as a part of the Ontario historical studies series, a biography of Mitchell Hepburn. Here's an interesting quote: "The election was widely seen as a plebiscite on separate schools." This was from the *Toronto Star*. "The government's separate school legislation accounts for its overwhelming defeat in this strongly Protestant constituency, and nothing else," the *Star* declared. "The electors discarded all but one issue. They listened to but one appeal, the sectarian appeal."

So in a sense what we determine from this rather long short by-election story is that by-elections can be a form of referendum. They are of course isolated to one particular area, but if the issue is promoted within the riding, it can end up being a referendum on a government or on a particular issue. The end result of the defeat in Hastings East was that Mr Hepburn in the winter 1936-37 session accepted leader of the official opposition Earl Rowe's resolution to eliminate these particular sections of the bill which would have given more taxes to Roman Catholic schools.

That's the historical perspective, and I hope you're not all asleep by the time I finish.

I'd just like to briefly go over my draft bill, which I assume everybody has got. It's a traditional omnibus bill, just a lot of technical changes. It simply amends the Election Act and the Election Finances Act and provides for referendums and simple word changes like changing the "chief election officer" to the "chief electoral officer."

In schedule B of my draft bill I have added a Referendum Act which provides a framework for referendums, based mostly on the Quebec legislation. For example, there are two umbrella campaigns, and as well there is a referendum council to adjudicate over specific matters dealing with legal technicalities, which would be composed of justices of the Supreme Court of Ontario.

I believe that this route, by my draft legislation, will provide a simple, straightforward process that in the long term will create more public involvement. I think that's the general goal of what we're trying to do here, which is to focus on trying to bring more people into the democratic process. That is something I am in favour of.

That's the end of my presentation. I hope I haven't bored anybody to death. Now we can start on the questions if anybody has them.

The Chair: Not at all, Mr Gardos. Thank you very much for your presentation. The government side leads off.

Mr John Hastings (Etobicoke-Rexdale): Could you give us some background? Are you at university or are you a lawyer? Where are you coming from on this issue?

Mr Gardos: I'm a grade 13 high school student and I've been involved on and off in the provincial political process. I believe that the front cover of that bill, although I should have replaced it with the long title of it — I've participated for the last two years in the Ontario model Parliament which is organized by Upper Canada College. We use the legislative precinct two days every May for the process. Normally I've always sat with the New Democrats, but I'm trying to be as non-partisan in this as possible. That's the extent of my political involvement. I know I may not be an expert in everything, but that's where I'm coming from.

Mr Hastings: What I'd like to query you on a little more is how you came to the decision as to your preference for the Quebec model of the referenda process, given the several difficulties that have arisen out of the Quebec model in terms particularly of its implementation and administration, ie, the questions that have been raised over the years; secondly, the consequences of the fallout from the 1995 referendum question in terms of illegalities.

Even more so, I'm quite amazed at your suggestion that we apply the Quebec model and particularly instil the role of the Supreme Court of Ontario in this whole operation, given that most of the presenters here — and even in the paper you can sense a spirit of greater citizen participation and not so much reliance upon a legalistic approach or a greater enhancement of the legal role in the referenda process as a whole, unlike Quebec's, where you do have this very strong, top-down, legalized, very formalized approach. I'd like to hear your thoughts as to how you came to the Quebec model.

My final question is, does your approach in any way illustrate an unease with the use of citizen-driven referen-

da? You said at the outset of your remarks that you were a little worried that we'd have to suggest that we may have too many referenda questions raised over time.

Mr Gardos: You've certainly given me a lot to chew over there. Specifically addressing my preference towards the Quebec model, in the issue of vote tampering, which continues to be a running news story within both the Ontario and Quebec media, I'm a little concerned that, perhaps depending on who presents the option, clearly in this case the Parti québécois government sent out its umbrella Yes campaign people with specific instructions. That can become a real concern, and perhaps that would involve strengthening the Election Act to provide against fraud and against vote tampering, but those would be relatively minor amendments when you get down to it.

Addressing the issue of the legalese aspect of it all, I think it could be very beneficial to have the Supreme Court take a look at this and address these questions, because sometimes very technical matters come up during the referendum process. The public is the final arbiter and they will participate in these processes, no matter which model we choose, because they will involve themselves, whether it's two umbrella campaigns or individual groups. I think that's primarily where citizen involvement can come in.

Of course we can always allow, as I said initially, the option of having petitions becoming resolutions becoming referendums, which is pretty much simply linking several processes that occur right now — or some of them don't occur as often, in the case of resolutions — linking them together and creating almost the same result.

But I think on the legal aspect of it, it could be very beneficial to have lawyers and jurisprudence take care of certain matters which sometimes are above my head as an individual citizen and sometimes above the heads of those politicians who sit around in Queen's Park and do the hard work that they do, because it's a very compact process and politicians have a lot of stuff to do. When you refer to the judges, sometimes it's a little bit easier than simply referring it to somebody else, say the public or to the politicians.

Mr Hastings: Thank you very much for a well-thought-out presentation.

1020

Mr Clement: Thank you for appearing before us. Why did you choose the model of the umbrella organizations according to the Quebec model rather than the federal model, which allowed for a number of different Yes or No committees?

Mr Gardos: There is clearly going to be a common interest among those people who would be in favour of an option or opposed to an option that simply brings many forces together and can create a unifying force. For example, if there were a referendum on debt reduction, there would be many forces in favour of debt reduction and many opposed to debt reduction. You can lump everybody together and they can work for a stronger effect and a stronger campaign; you don't have as much dilution in the process.

Mr Phillips: I appreciate your thoughtful comments and all the work you've done on the bill. To draw out your thoughts on the actual way the referendum would

work, I gather from the government's paper that the driving force behind the referendum in their mind is that there's been some well-financed, well-heeled special-interest groups that have had their way with previous governments — although they've yet to name anybody, I must say, and some day we will ask for the examples of these enemies of the state.

But you in your document are suggesting, if I read the bill correctly, that with a referendum there be two committees set up with — are you suggesting strict spending controls on what money is spent on the campaigns?

Mr Gardos: Generally speaking, in the amendment to the Election Finances Act section, which is schedule C of the draft bill, it simply involves adding the words "and/or referendum" after the word "election." What we get is, hopefully, a very simplified process in which the election and referendum are almost the same thing under the Election Finances Act, and therefore the spending controls under the Election Act for elections and by-elections presently would simply be the same, hopefully, for referendums. Therefore, you impose some control on these issues. Naturally, you can't get 100% control, but you simplify the process and you get more control, hopefully, over these sorts of issues.

Mr Phillips: What, in your mind, is the need for spending controls and why would you recommend spending controls?

Mr Gardos: The corporatist element, I guess you could say. You end up having different groups and different corporations and different organizations that do have money and do potentially support one option or the other throwing their potential weight behind, say, a yes or no option in the case of debt or deficit reduction, sometimes for more sinister reasons, sometimes for more virtuous reasons. In that case, what you can do is limit the possibility of having something like that occur so that you have a fairer playing field for both sides.

Mr Phillips: I'm trying to get an idea from you of the sorts of issues that you would suggest referendums be used for. To elaborate, what we have right now is a range of opinion, from the position that even if there's going to be an increase on tobacco tax there must be a binding referendum, up to that referendums should only be used in unique cases of very major new policy direction for the province. Can you give us any guidance on where you would see us trying to aim in terms of the use of the referendum?

Mr Gardos: Perhaps somewhere in the mushy middle between those two. We must take into consideration that having technical and regulatory matters submitted to referendums simply isn't going to serve the purpose and will make almost impossible questions for people to answer. Even if you give them an A and B, A and D or A and F option in terms of their ballot, it's simply going to be too difficult.

I believe that a government is elected every four or five or possibly even three years to do a job. We should be cognizant that we have given them the right to do that as voters, those voters who do wish to vote, and we should permit them to do their job as well as we can. I think we should be leaning towards having referendums

on major policy shifts or major societal shifts, moral or otherwise. I hope that answers your question.

Mr Phillips: Yes, it does. You don't comment on recall, which was part of the government's paper, and I assume it's the government's intent to include recall. Did you consider it?

Mr Gardos: I thought about it, but in my field of vision it falls into the same category as citizen-initiated referendums, that you get a group of particularly determined people together. I think there was some comment from somebody that in Premier Rae's riding you might have ended up having a recall, by a number of people who lived in York South and just couldn't stand him for one reason or other. In that sense, you get into a real problem with personal vendettas or political vendettas.

Considering the Burkian model of parliamentary democracy, it just won't wash to be having politicians constantly under threat of being thrown out, because it will inhibit their work. I assume that most politicians are virtuous people and do what they say they will do. There are constraints in a system of parliamentary democracy on parties and on individuals. If you're that concerned, hold more free votes in the House. Don't insist on the right of recall of people.

Mr Silipo: I like the idea of more free votes, Mr Gardos. Perhaps we should talk about that another time.

Mr Clement: How the tune has changed.

Mr Silipo: I've liked them for some time, I'll tell my colleagues across the floor.

I wonder if you could talk a little more about your opposition to the notion of citizen-initiated referenda. I understood you to say that your concern primarily is that a group might be able to take hold of the agenda and exert greater control. Couldn't you guard against that by establishing significant levels of support that would have to be there for a particular petition or issue before it could be sent out to referendum?

Mr Gardos: It becomes a very difficult matter, in my personal opinion, because you can end up with too high a threshold and you can't get enough people to have signatures on a petition for a particular referendum subject; too low, and it just becomes a sort of hairy canary process. Particularly in the case of some of the American states, they have 2% or 3%, which is pretty low; of course, America has a larger population than Canada. But it can become a very dodgy process in which you have a plethora of subjects coming towards all the people in terms of a referendum vote if you have a threshold that's too low. Too high and you're going to end up with having none.

I think it's a matter best left to having perhaps a wide number of petitions submitted to the Legislative Assembly; then perhaps an individual MPP backbencher or a cabinet minister presenting a resolution to the effect of what the people in the petition want; and then perhaps clauses in the resolution that this should be turned into a referendum. That process simply links existing processes together and limits the possibility of having — I hate to use this word, but I am going to use it — “wackos” harnessing the agenda and driving it towards their own needs.

The Chair: Thank you very much for your presentation, Mr Gardos. We appreciate your input.

1030

TAXPAYERS COALITION BURLINGTON

The Chair: Our next scheduled group is the Canadian Taxpayers Federation, but they're not physically in the room yet, although we do have representatives of Taxpayers Coalition Burlington here and they're prepared to come forward at this time.

Mr Frank Gue: Thank you, Mr Chairman. We are Hugh Doull, president, and Frank Gue, myself, education chair, of Taxpayers Coalition Burlington.

We have 10 points to make this morning. But first, this government is to be complimented on this initiative. It has identified a wave of the future. Unfortunately for you, our notes were prepared before we received the information packet which included Your Ontario, Your Choice, so a few of our remarks are going to sound as if they were lifted right out of that document. Sorry, you'll just have to put up with that.

We'll quote a few lines from a fine article in a recent issue of the Economist. The writer gives a working definition of good government as a three-level structure. At the bottom is an industrious, intelligent, incorruptible civil service getting instructions from and making suggestions to the middle level of two or more political parties, publicly debating rival ideas. The top level is the voters “to whom the arguing parties submit the ideas for the final choice.” This amazing article — you should read it — goes on at length, including the following quote: “The ‘western’ idea of democracy in fact probably appeals to something people everywhere want to believe: that every human being is entitled to an equal say in how he is governed and should not be denied by others who claim that the business is best left to them.” With that in mind, let's proceed.

(1) A definition. A referendum is “the principle or practice of submitting to popular vote a measure passed on or proposed by a legislative body.” That's from Webster's Ninth New Collegiate Dictionary.

(2) A summary of our position, Taxpayers Coalition Burlington. We are in favour of referenda in principle. However, like motherhood, a referendum can be either a blessing or a disaster. We will suggest ways to get more blessings and fewer disasters.

(3) Why we favour referenda. Representative government has failed in many respects. Politicians often do things for which the citizens didn't dream of electing them and fail to do things for which the citizens had held cherished expectations. This is often not the politicians' fault, since it is obviously impossible to foresee and have an election plank platform for every eventuality.

Politicians can have a difficult time learning what constituents want. Some hold town hall meetings or set up citizens' advisory groups, as Alderman Don Smith did in Burlington; send out questionnaires, solicit letters and so forth. Furthermore, some issues are the politicians' third rail: Touch it and you're dead. Only two such are abortion and capital punishment. By the way, most of our examples are like those foregoing, federal rather than provincial, in order to avoid inflaming any nerves, which is not our purpose here. However, having said that, may I ask why this government insists on bulling onward with

the very contentious AVA proposal without a referendum?

Politics is a mixture of leadership and followership. The old wisecrack is that the successful political leader figures out where the herd is stampeding and gets out in front. But there is a constant nagging question: "Do I lead on this issue or do I follow?"

The price of leadership can be very high. Bernt Gilbertson, once PC government whip, MPP for Algoma, alone in his caucus voted against his government on an issue of conscience, instead of taking the customary way out of absenting himself from the House. He paid with his political life at the next election. While not excusing politicians from this kind of agonizing soul-searching, a referendum can at least sound out the constituency on an issue, or perhaps more likely a plebiscite for some matters.

Referenda, done right, offer a means of overcoming public cynicism and indifference, which is illustrated by the low turnout in many elections. "Done right" includes a duty to publicize issues in a transparent, unambiguous way, debate them openly and sell the electorate honestly. Referenda should raise dramatically the public's awareness of the fundamental issues, ignoring the petty and the irrelevant, which might, for instance, include debates on tainted tuna or whether the PM used foul language in the House.

Referenda should cause politicians to do routinely several important things which they hate to do. Example: Any major fiscal measure, such as the startup of a new program like CPP or the Canada Health Act, should have been costed out at present value with the best actuarial and demographic service and advice available. A voting, taxpaying citizen, to make an informed choice, should have understood in the 1960s that a yes vote would cost him X thousand dollars per year. Hopefully we are past the era when we thought that government services are free.

Referenda should remind politicians of their promises and keep them standing firmly on the platforms on which they were elected.

(4) The downside. Questions can be confusing, ambiguous or cunning, eg, the Quebec referendum or the Charlottetown accord question. Neither politicians nor civil servants should be entrusted with the framing of a question. It should be done by a small panel of independent outside professionals who, working with an initial outline, perhaps from Hansard or some such, and general direction from perhaps Mr Speaker, would be asked to create a simple, unambiguous, unslanted, unloaded question; or to critique and, if necessary, sanitize any citizens' petition question.

This panel should be of persons or agencies with an established reputation for impartial, non-political, dispassionate analysis and reporting. One such is the Fraser Institute, which has a worldwide reputation for excellence in this kind of work. Such groups as the Council of Canadians, however, have recognizable slants on certain matters. This is not to denigrate the council or any other such body but merely to urge that slants, biases good and bad, and special interests be carefully excluded from the

process. The development of simple and honest questions is of paramount importance. It's the hard part.

The technology for referenda must be user-friendly and inexpensive. With universal TV, telephone, Internet and other kinds of household interlinking, such a system is within our grasp. Technology can protect us from having the process hijacked by special interests or used fraudulently. You might have a look at the fingerprint technology clipping attached to this brief for a glimpse of one tiny corner of this big, big technology — security technology.

What Jean Chrétien has accurately dubbed the Constitution industry of lawyers and academics could have a field day with referenda. A way will have to be found to install referenda without inviting this constitutional wrangling.

1040

(5) The scope of referenda. Referenda should be for major questions, and what constitutes a major question is a major question. We should consult with countries which have used the process for centuries, perhaps Switzerland or some of the states of the US and indeed some jurisdictions in Canada.

Among the criteria for an eligible question should be at least the following: having significant impact on taxes; affecting important domestic policy, such as education, pensions, grants, lotteries, labour law, the police-court-justice systems; or affecting quality of life, for example, environment, industrial activity, important municipal change such as boundaries and amalgamations.

(6) Who should launch a referendum? Referenda enable citizens to express their wishes. Therefore, we must have ready means to launch one. The regulations should be by a constituent assembly, because laws of this kind in the hands of professional drafters tend either to miss some main points or to become inaccessible to the very citizens for whom they are ostensibly created because of the cost of using them. Example: A citizen attempting to use the Municipal Conflict of Interest Act exposes himself to costs potentially in the tens of thousands of dollars. This Municipal Conflict of Interest Act could well be studied to learn how not to legislate, and follow-up training of folks such as court clerks is necessary to encourage them to assist citizens with some answers other than the standard one, which seems to be, "Get a lawyer."

A referendum should have the backing of some significant number of citizens as attested by a dependable petition. A filter is needed to protect against trivial complaints, hidden agendas, and so on. Again, the assistance of some experienced jurisdiction should be sought.

Referenda originating with Parliament: We've already talked about section 4.

(7) Exceptions and special circumstances. Some matters, for example, fishing, logging, mining, and school board amalgamation, are intensely local, and referenda should be regional in such cases.

Many advocacy groups supported by government, especially federal government, are hidden components of the system. It would be easy for a government, by backdoor support of such a group, to influence the outcome

while seeming to have clean hands. Advocacy should be a citizen initiative, not government's. Grants to advocacy groups should be eliminated.

(8) Binding or advisory? Some politicians' standard response to referenda proposals is that they have been elected to govern and, by golly, they intend to do so. This may have been okay when constituents were few, rural, uneducated, unconnected by radio, telephone or much else, and exclusive of women, who were once considered incapable of understanding politics and economics.

This is a different age with different people with different levels of education and sophistication. It is egregiously offensive for politicians or civil servants to assume serenely that they alone can understand complex issues which would only confuse ordinary citizens, an attitude which I'm sorry to say is not difficult to find. A review of a few decades of government in almost any country in the world will demonstrate that it is the politicians and bureaucrats who are often confused or inattentive to their homework. "Who reads the bills? I sure don't," is a recent remark of one politician — fortunately, not an Ontario one.

There are many grass-roots organizations providing logical voices that must be heard between elections. The Ontario Taxpayers Federation and the Taxpayers Coalition Burlington are two such, as are the Fraser Institute and the National Citizens' Coalition, and others.

It is past time that politicians, surrounded by this clamour of editorial writers, columnists, academics, delegations, briefs, letters, talk shows, opinion polls and so forth, drew a deep breath and acknowledged something to the effect that we must legitimize, systematize, organize and summarize this deafening racket and draw it properly into the political-economic mainstream. Otherwise our, so-called representative democracy will become a farce, as it sadly is already in the eyes of some. Direct democracy by referenda is one respectable way to do this. We just have to find an honest mechanism for doing it.

Accordingly, therefore, we favour binding referenda with suitable safeguards against hasty, ill-advised action, together with some sort of appeal or moratorium mechanism.

(9) Cost. Organized by government, a referendum system and its regulations will be complex and enormously expensive. This is no criticism of present company, but is merely a reflection of several thousand years of history. If you wish to note how many thousand years, you might read all of the book of Leviticus plus Exodus 19: 13-27. That's your homework, ladies and gentlemen, for today.

The referenda system design and installation should be let out to competitive tender from suitable consultancies, with guaranteed, demonstrable low cost and high security being prime criteria for placing the business.

(10) Finally, summary and conclusions. With reservations and caveats, only some of which we've recorded for you here, Taxpayers Coalition Burlington recommends that our system be steered purposefully, on a scheduled basis, with objectives and milestones, towards direct democracy using binding referenda on critical issues.

Many words in that statement need to be defined with care, and we suggest that the job be done by a constituent assembly which uses politicians and civil servants as resource people only, not decision-makers.

We wish you the very best of wisdom and good luck in your deliberations, and we thank you very much for your attention and we'll answer any questions that we are able.

The Chair: Thank you very much, Mr Gue, Mr Doull. I turn to the Liberal caucus first for questions. We have about five minutes per caucus.

Mr Gilles E. Morin (Carleton East): I'd just like to have your opinion. "There are those who say that referenda are instruments used only under certain circumstances to support and therefore legitimate the actions that the leadership already wishes to pursue. Those certain circumstances are defined as follows: when there's no clear consensus or when the leadership would suffer a loss of legitimacy from acting unilaterally." I'd like to hear your comments about that statement.

Mr Gue: That's very interesting. I've not heard that. Where is it from?

Mr Morin: It's from a book written on Mr Manning called *Of Passionate Intensity*.

Mr Gue: I've heard of that one. I haven't read it yet.

Mr Morin: I'd like to hear your comments about that statement.

Mr Gue: Certainly the opening bit of that is part of the downside, isn't it? Referenda can be misused. But it's hard to argue with anything said there. I suppose you could come back to an issue that is not a provincial one but a federal one so we can view it with some objectivity. I would think that abortion or capital punishment would be one of those where any government, as obvious from Canada's history, has simply run a mile from trying to make and enforce a decision upon the Canadian people. Legitimacy would probably be lent to a decision made after a referendum. You might disagree, but it's a democracy and you have to say: "Okay, 58% want or don't want capital punishment. I don't agree, but I'm a Canadian. I'll go along."

Mr Phillips: On the final page of your brief, the last paragraph, the Pagnuelo paragraph, says: "We have an issue before us now that should be by referenda: property tax reform. The government is bulling ahead and is not listening. This seems at variance with the letter and spirit of this discussion paper."

I gather the government is saying they were elected and this is a tax system that has to be fixed and they're going to fix it. Your organization, I gather, is suggesting this should be subject to a referendum. Is that right? I guess Pagnuelo's advice to us and to you was to make that point. Am I interpreting that paragraph correctly?

Mr Gue: Oh, yes. The current government is between Scylla and Charybdis, I guess. There is a need to correct the pretty bad property taxation system, and there is a need to have it done long before a referendum system could be in place. That doesn't alter the idea and the principle, which long predates these discussions, that we feel a referendum would be the ideal way to settle this matter.

Mr Phillips: Your recommendation on who the small panel of independent outside professionals should be to draft it is interesting. It may highlight one of the challenges, that the definition of independent, outside, dispassionate, non-political and impartial may depend on the viewer's eyes. The Fraser Institute certainly is well regarded and very professional, but I think they themselves would acknowledge they come at it from a view. I think they would regard themselves as a small-c conservative organization.

Mr Gue: Market economy.

Mr Phillips: Yes, but they're not dispassionate. Your examples are, I gather, the Fraser Institute, the National Citizens' Coalition and the Taxpayers' Federation. Do you think we may have difficulty if you regard those as dispassionate, non-political and impartial?

Mr Gue: I'm glad you brought that up, because that's not what that suggests, sir. It's in different context.

Mr Phillips: It says the panel should consist of — “with an established reputation of impartial, non-political, dispassionate analysis in reporting. One such is the Fraser Institute.”

Mr Gue: Yes, that's correct. But this paper does not suggest that, for instance, the National Citizens' Coalition falls into that category.

Mr Phillips: Oh, okay. Just the Fraser Institute.

Mr Gue: It's in a different paragraph in a different context.

Mr Silipo: Part of the background to this is certainly what you've talked about, which is, as the government puts it, the need to move away from special-interest groups taking hold of the agenda and controlling the agenda. I'd like to hear a bit about how you go about defining those groups. Would you consider your organization, the Taxpayers Coalition of Burlington, to be a special-interest group?

1050

Mr Gue: Mr Silipo, that is a loaded question. That's not a reflection upon you at all, because my interpretation of the term “special-interest group” and yours are bound to be different.

Mr Silipo: That's why I'm asking the question. I'd like to understand your definition.

Mr Gue: All right. Hiding behind the dictionary definition, a special-interest group is a group dedicated to getting a government to spend money on a special interest. We are not a special-interest group.

Mr Silipo: Because you're trying to get the government to spend less.

Mr Gue: To spend less and raise quality.

Mr Silipo: What if the definition of a special-interest group were a group that is trying to get the government to do something?

Mr Gue: If that were the definition, then we could only agree with it. Of course we're trying to get the government to do many things.

Mr Silipo: Then you would classify as a special-interest group.

Mr Gue: If that were the definition.

Mr Silipo: The point I'm trying to make is that it seems to me we spend endless, futile energies debating this whole question of who has hijacked whose agenda,

and what we really should be saying and accepting is the fact that there are clearly among our society, as part of the democratic process, different perspectives which find themselves translated through particular groups and organizations. In your case, your organization is advocating for less spending, among other things, by government. Other groups might be advocating more spending on such things as child care, for example.

It seems to me that the government, particularly the government of the day, makes a big mistake when they try to categorize one as a special-interest group and therefore negative, and the other one as not a special-interest group, as opposed to simply acknowledging that both are special-interest groups advocating for different things, and then that there's a political judgement to be made about whose advice a government or a political party follows. Wouldn't that be a fairer way to assess things?

Mr Gue: I think you've hit the nail on the head, Mr Silipo. A sentence that we purged from this to get down to the 15 minutes said that the sponsorship of special interests must not be a government initiative — as it is, particularly with the feds. They sponsor any number of special-interest groups. It's iniquitous. There is nothing wrong with a special-interest group if it is as you define it, which is merely a group with a particular interest, be it spending less or spending more or raising quality or whatever. There is nothing wrong with that, and such a group must be acknowledged and is free to go and get their 10% of signatures on their petition.

Mr Silipo: I'm glad to hear you say that. I guess I would just suggest to you, sir, that your organization ought to look also at how you come to these definitions. It seems to me that when you make the point that, among other things, the question on the referendum should be set out by a small independent group, we could have a long discussion about how we'd get to establishing that independent group. When you classify an organization like the Fraser Institute as non-political, dispassionate and impartial versus other organizations, I think we enter into a whole other area of disagreement. I just make that point.

But I want to, in the moments I have left, ask you about something else which I acknowledge is a little outside the immediate scope of what we're dealing with through this referenda question, but it's certainly part of the whole issue around how to make the process of governing more democratic, and you did make the comment at the beginning of your presentation that representative government has failed. I wonder if you or your organization have any thoughts about the use of proportional representation as a measure to increase the level of democracy in the province, that is, its use as a method of electing MPPs, whether as a whole system or as part of a system. There are obviously various models of that system of government used throughout the world. Have you looked at that at all as something that could complement the use of referenda and the use of some of the other things you're advocating?

Mr Gue: Personally, yes; organizationally, no. My personal opinion — I emphasize that — is that there are several versions of proportional representation and I think

we have to look at some version of that when we're talking about referenda. That's my personal opinion, not the Taxpayers Coalition's.

Mr Clement: We've been having a discussion for the past couple of days now on definitions of "special-interest groups." I agree with a lot of what you just said about how groups of citizens come together to try to influence their government. I guess what we're trying to say in the discussion paper — I'd like your comments on this — is that it's better to have those coalitions of people coming together in the sunlight rather than trying to influence 130 legislators only; that the process will be fairer, more democratic and will lead to a less questionable result in terms of legitimacy if these groups of citizens who feel very strongly about their points of view try to influence 10 million Ontarians rather than 130 legislators. Is that similar to how you would see things?

Mr Gue: Yes. I think that's embedded in what we say by "transparent" and "selling." It's a selling job. Anybody is entitled to try to sell anybody anything as long as it isn't illegal, immoral or fattening, and I can only agree with you.

Mr Clement: We were talking about free markets in relation to the Fraser Institute. We're trying to create a free market of ideas here with 10 million consumers rather than 130 consumers. Does that make sense?

Mr Gue: Oh yes, of course. I think it does.

Mr Chris Stockwell (Etobicoke West): Mine is maybe a little bit off topic, but direct. There is this argument that they're out trying to affect the decision-making of 130 MPPs. It seems to me that those people — I don't even know the definition of "special-interest group" any more — who want to make input into the process, all they have to do is get to the Premier and the few people around the Premier who make the decisions. That's where the system, it seems to me, starts breaking down.

It seems simpler to me that rather than trying to empower — and that's another word that sometimes I don't understand — 10 million Ontarians, wouldn't it be a lot simpler to make the system work the way it was supposed to work and empower the 60 backbenchers or the 100 backbenchers in the Legislature to represent the points of view of their constituents and the people who elect them?

Mr Gue: I wish there were a simple yes or no answer to that. I suppose I'm an incurable cynic, but my feeling is that every system degenerates. You need only look as far as our good neighbours to the south. The American Constitution is a marvel, if only it were used.

Mr Stockwell: I'd rather look across the seas to the British system, where over the years, and you can go back into previous centuries, they've had very responsible prime ministers — and you think of Disraeli — even up to the date of Churchill and so on who lost votes in the Legislature because their backbenchers decided that it wasn't good for the party. It seems to me we've come a long way from there to today when any member who votes against their own government is literally punished.

I just can't get it through my head why we sit about here trying to empower these 10 million people when, fundamentally, to be an MPP you must be lobotomized or

vote against your party and suffer the consequences. I look to people who come in here suggesting referendums and empowering the 10 million people when we sit about this place and we're supposed to represent these people, and I say to you, being from Burlington and being a taxpayer, do you really think it's important that we take that far a jump, a leap, or should we go back to the way the system was supposed to work? Governments could lose bills and not fall and people who represented constituencies actually did what they were supposed to do — represent their constituencies.

Mr Gue: I think I would have to agree with you, sir, with one unfortunate disagreement, which is, if we could go back, and I don't think we can.

1100

Mr Stockwell: Ultimately, by referendum and by election — I think you'll agree with my opinion — a cabal about the Premier's office — not just this administration but previous administrations, back for decades, I would say — fundamentally runs the province. I don't think there's anyone in this province who's in the know, or as much in the know as you need to be, who would argue with that point of view. You're suggesting to me that we've got to go backwards to create a process that was designed to empower the people under parliamentary democracy. Was this the way parliamentary democracy was meant to work? If it's not, rather than trying to fix this broken system, why don't we try and implement the process the way it was supposed to work?

Mr Gue: As I'm sure you're aware, there's no short answer to that, is there? I have to go back and say that the system is broken. I think it is irreparably broken. The economics and demographics that we are faced with today make it impossible to fix the system. I wish it were otherwise, but there comes a time when you have to change from a feudal system to something else. You have to change, as the USSR did, from a dictatorship to something else. I think we are at a place where we have to change from representative democracy, which wasn't all that bad but which has to some extent failed, to something else.

The Chair: Thank you very much for your presentation. We appreciate it.

ONTARIANS FOR RESPONSIBLE GOVERNMENT

The Chair: Our next group is the Ontarians for Responsible Government, represented today by Mr Colin Brown.

Mr Colin Brown: Good morning, ladies and gentlemen. I appreciate the opportunity to speak with you. I'm just going to do some initial remarks. I'm sure you've got some questions.

I'd like to thank you very much for the opportunity to speak to you about the issue of referenda. As a wise man once said: In a democracy you have the freedom to say whatever you want; the real problem is getting someone to listen. It's heartening to see that this government is willing to listen to the people on a crucial issue and it's also heartening to see a direction from the government towards trusting the people who elected them.

My name is Colin Brown. I represent a group of about 6,000 citizens from across the province called Ontarians for Responsible Government. As our name suggests, we believe governments should be responsible. We believe that means government should keep its promises. We believe government must not squander our hard-earned tax dollars. Most of all, that means we believe government must be accountable. That's why I'm here this morning to speak out in favour of direct democracy. After all, where you have direct democracy you have governments that keep their promises, you have governments that won't squander our resources and you have governments that are accountable to the people who elect them. In short, you have governments that listen to the people.

Of course, where you don't have direct democracy, all too often you have politicians who do not listen to people. Oh true, they do listen every four years or so, during an election, but once they're safely in power it's a different story. All of a sudden they begin to disregard the views and desires of the people who elect them, all of a sudden they begin to pass laws that they want and not the laws the people want and all of a sudden promises made to voters during elections are forgotten. In effect, in the years between elections the voters must endure what to all intents and purposes is a dictatorship. Under such a system abuses will inevitably occur. Absolute power, after all, corrupts absolutely.

Not too long ago, for instance, the Conservative federal government imposed the infamous goods and services tax on Canadians, despite overwhelming public opposition. Canadians who made their views known through grassroots campaigns, letters, phone calls and rallies were ignored.

Then there was the Meech Lake accord fiasco. It all started — remember? — when Canada's Prime Minister and the 10 provincial premiers met behind closed doors and agreed to fundamental changes to Canada's Constitution. Acting without an electoral mandate and without consulting Canadians, the Prime Minister rolled the dice in a high-pressure, all-or-nothing gamble to get his deal through. As we all know, the Meech Lake accord collapsed amid acrimony and confusion.

What went wrong? The same thing that went wrong with the GST. You had a situation where less than 1% of the people were making things happen, less than 2% of the people were watching things happen and 97% of the people could only ask: "What's happening? What's going on?" It was not, needless to say, democracy at its most shining moment, nor was it a moment that inspired confidence in political leaders or in democratic institutions. Indeed, Canadians became angry, they became disillusioned and, worst of all, they became apathetic. Much of that remains today. Who can blame them? It was the system that had let them down.

The bad news is that at the same time that same form of parliamentary system which permits self-seeking politicians to promote their own agenda rather than reflect the public will exists here in Ontario. In short, no mechanism exists here whereby citizens may check the untrammelled power of majority governments. The good news is that this government understands the need to give

real power to the people. This is an excellent study, *Your Ontario, Your Choice*. In fact, it notes, "The Ontario government is firmly committed to using the referendum as a tool of increased accountability and improved public participation in the decision-making process." We heartily applaud this. We think it's been a long time coming and we're delighted to see it.

Allow citizens to make the laws they want to make, amend the laws they want to amend and repeal the laws they want to repeal. Trust the people. Think of it. If we had direct democracy here in Ontario, citizens could do an end run around politicians. Politicians, in other words, could no longer frustrate the public will. That means no more GSTs, no more Meech Lakes. In a way, direct democracy acts like a kind of political pressure cooker. When politicians ignore the will of voters or when political institutions are not working, anger naturally builds and builds. With direct democracy laws, you have a release valve that pops to relieve that pressure and relieve the anger. Exasperated citizens can do something, in other words. They can circulate petitions; they can hold referendums. It means something. They can repeal bad laws. In short, they can take control of their own destiny. To me, that's good for democracy.

Moreover, direct democracy acts as an antidote to political apathy. If citizens had the opportunity to participate directly in the law-making process, if they believed their votes really counted for something, the feelings of powerlessness and anger would dissipate, and that's good for democracy. Consider this: If we had a system of direct democracy, it would encourage more people to enter the political process. Not that any of them would run against any of you people here, but in other words, direct democracy would encourage political involvement. Businessmen, doctors, auto workers — anyone can circulate petitions, draft questions or promote issues important to them. That's good for democracy.

Finally, direct democracy gives laws greater legitimacy. People would be more apt to obey legislation — and we think about tax evasion and avoidance in this country — that has the clear, direct support of the majority of voters. In Switzerland two years ago they voted for a GST in a national referendum. It took them two attempts to do it, but there was 68% support for a new tax. They would know that the government was acting in accordance with the popular will. To me, that's good for democracy.

But how will direct democracy work in practice? That's a question raised in *Your Ontario, Your Choice*, and it's a good one. Let me suggest that as a first step this government should check out what's going on in other countries that employ direct democracy. In Switzerland, direct democracy has been employed for centuries, and when I say "direct" I mean really direct. The Swiss can vote on virtually anything. They can amend their Constitution, they can accept or reject foreign or domestic policy, and they can introduce their own laws through initiatives.

Direct democracy is alive and well south of the equator as well. Australia, for instance, which shares our parliamentary system, has a provision in its Constitution for national referendums. In fact, any amendment to the

federal Constitution must be approved by both houses of Parliament, by an overall majority of voters and by a majority of voters in four of the six states. Referendums are also employed at the state level as well.

Referendums are also used extensively at the state level in the United States of America. Right now, 22 states in the US allow citizens the power to initiate state-wide legislation. What's more, the voters in 45 require a state-wide referendum to amend their constitutions. Initiatives are also widely used at the local government level throughout the United States.

Nevertheless, some people still oppose direct democracy. No doubt, you will hear from some detractors. That's why I would like to discuss some of the more common objections.

First, some will argue that direct democracy runs counter to our traditional parliamentary system. It's an argument that no doubt was first raised when the secret ballot was first proposed. The fact is that the parliamentary system is constantly evolving. Since 1215, when the Magna Carta was signed, we've gone from absolute monarchy to rule by aristocracy to the democracy we enjoy today. Implementing direct democracy would be a further step in that evolution and would further diffuse political power from the few to the many.

1110

Another argument is that direct democracy would weaken or replace representative government. Nothing could be further from the truth. Indeed, direct democracy would enhance representative government. That's because direct democracy would stimulate the government to do the job it was elected to do, namely, represent the public. Only if the government fails to do that job will voters turn to referendums. Still, some say referendums would result in the tyranny of the majority. Here's another argument that doesn't hold water. After all, any measure passed by referendum would be subject to the same safeguards as any other piece of legislation: common law, the Canadian Bill of Rights, the Charter of Rights and Freedoms. What about the rich? Would they be able to somehow influence and sway referendum votes? The answer is no. It would be far too difficult to buy the support or sway the entire voting population. If you need proof, look at how the Yes side outspent the No side in the Charlottetown accord at least 10 to one and went down to a defeat.

A more elitist argument is that voters are simply not smart enough to vote on complicated issues. If that's the case, then maybe citizens should not be allowed to vote, period. After all, when they cast a ballot during an election, they must choose among a variety of politicians and parties, each of whom is representing a bewildering array of promises, policies and programs. By contrast, in a referendum, the voter faces a single choice on a single issue.

Of course, we can learn by what's happening here in Canada as well. The provinces of British Columbia, Manitoba, Saskatchewan and Alberta all had some form of direct democracy legislation on the books earlier in this century. On the national level, we had a plebiscite in 1942 that helped to defuse the conscription crisis, and in 1992, Canadians from all walks of life participated with

great vigour in the Charlottetown accord referendum debate. Recall that during the debate, the Yes side was supported by governments, political élites, corporate leaders and by big union bosses, yet individual citizens, empowered through direct democracy, said no. It was a great testament to the extraordinary way in which direct democracy can empower the people.

Of course, the Charlottetown accord vote was not binding and it was a one-shot deal. Here in Ontario, we need a more effective direct democracy law that is binding and which will truly empower the people. Towards that end, we at ORG recommend the Ontario government introduce and pass a direct democracy bill modelled on the draft bill which is our submission to you today. We think it's a good starting point. It's something we've proposed out in Alberta and we'd welcome your comments on it. It explains in detail how we think direct democracy could work in Ontario as well.

In conclusion, let me stress that Ontarians have always cherished the freedoms inherent in democracy, that many have fought for it and many have died for it. The time has come to take the next step in the centuries-old evolution of democracy. We strongly urge the Ontario government to take that step, trust the people. As Winston Churchill once put it, the government is the servant of the people and not its master.

The Chair: We have about five minutes per caucus for questions, starting with the New Democrats.

Mr Silipo: Thank you very much, Mr Brown. You haven't talked specifically a lot about the draft bill that you've given us. There are just a couple of areas in it that I'd like you to comment on a little bit more. You're suggesting in here that the threshold for citizen-initiated referenda, if I've understood it, be 3% of electors.

Mr Colin Brown: That's right.

Mr Silipo: Although you've set this out as a bill, I'm assuming that in effect — sorry, I don't want to assume; I want to ask on this point. Is that in the context that others have been talking to us about, that is to say that a question could be submitted by a group with that kind of support? When you say a bill, are you talking in effect of a full-fledged bill that would be set out in here?

Mr Colin Brown: First of all, you're right about the threshold limits. Those are flexible numbers, but I would try to keep them low. We would support any legislation whereby an initiative could be as binding on politicians as it could possibly be. Let's say the people wanted to draft their own law — a hypothetical situation — we would support any situation where that law would essentially either have to be rubber-stamped by politicians or it would be very, very difficult for them to circumvent it, ie, a very substantial majority of the Legislature would have to countermand the public at their own political peril, I might add. We want to put as much power in the people's hands as possible.

Mr Silipo: You're taking the notion of referendum beyond what others have talked to us about in terms of citizen-initiated ones. You're advocating not just for citizen-initiated referenda on a particular course of action, but even to the extent of a full-fledged law being drafted.

Mr Colin Brown: Yes.

Mr Silipo: That's interesting, assuming there would be a number of particulars that we'd have to look into. But I note that this is the first group that's advocated that kind of use of this.

You have been asking various groups and, given the approach you've taken to this, I'd like to know if you or your organization particularly has a position on this. Part of the rationale for your making the presentation that you have is on the basis that there's no system in Ontario to check the power of majority government and obviously you see this as being an important way to do that. I wonder if you've looked at the notion of proportional representation as being another way in which that could be done, as I would argue, to improve the level of democracy that would be exercised by having that method of electing MPPs to the Legislature.

Mr Colin Brown: Anything is probably better than what we've got now. However, we feel that things have evolved and the climate that exists in the voters, in the taxpayers of this province and this country right now — I think that any changes, Mr Silipo, you try to make to just how politicians are elected or that sort of thing, it too would be perceived with apathy, and you could spend a lot of time trying to do that and it might be a very noble cause.

Mr Silipo: I'm not suggesting it as a replacement for referenda, I'm suggesting it as an addition to looking at how we could expand the use of referenda, also looking at the way in which MPPs were elected as another potential area for change.

Mr Colin Brown: As I said, any changes that are more representative are good, but I think we've gotten to the point whereby the people are sufficiently angry and sufficiently apathetic out there that you've got to put the button in their hands.

The Chair: We turn now to the government caucus.

Mr Hastings: Mr Brown, thank you for an excellent presentation. My question relates to the general thinking of how we move from this climate of cynicism and distrust of our public institutions to a referenda culture. What specific steps do you think are required to educate — and I mean educate in the broadest sense, because the public's pretty clued in — upcoming voters and younger voters who don't necessarily in some instances participate in even provincial elections? Do you think the education system needs to be looking at being partner of that operation?

Mr Colin Brown: I would think this could change the way political science is taught in a lot of universities; a few of my old profs might not like it too much. If you were marching people out into society with the will that not only is there a fairly elitist group of very thoughtful and sometimes brilliant people who control the political machinery of this country, you don't even have to join them; that if you want you can end-run that gang and maybe stir up some trouble of your own, I think that would be terrific.

If you look at other places where it's been done, all you needed was Proposition 13 in California to start this thing snowballing and it's now just a way of life and it's an assumption of democracy in locations where it's been done once. There are people who overdo it. They think

they can get themselves on an initiative and you'll hear every now and then on the news that there's some crackpot initiative in some state and it goes down in flames. But the fact was that people had the opportunity to run it up the flagpole and it got trounced and that's the end of the idea. I just think it opens up the process and I think all you've got to do is do it once and you change things forever.

1120

Mr Clement: Thank you very much, Mr Brown, for your views in presenting to this committee. I wanted to highlight something about your bill because I think it's important to get this on the record and I'd like your elaboration on it.

What your bill proposes in essence is that if you get the right amount of petitioners within 90 days of a bill being passed, that bill becomes automatically repealable by referendum. We've had a lot of submissions over the last two days somewhat going in the opposite direction, saying that referendums are used only for important issues. Potentially what you're saying here is that a group of petitioners can decide what they think is an important issue and can force the repeal of that legislation. I'd like you to elaborate on that.

Mr Colin Brown: What they could do, they could put a hold on it. They could block the immediate assent to that bill. Then it would be up to them to go through the process of normal initiative referenda to do something else. If you were talking about a bill, they could effectively block something for a couple of years, because what we've suggested in the bill is that you have maybe one or two events every four years. You don't have referenda popping up every six months and driving everybody crazy, but maybe you have a 24-month period so that people know they're not going to be bombarded by these things. Effectively, yes, it can put a staying time in the implementation of legislation, if enough signatures are gathered.

Mr Stockwell: So ultimately, 150,000 signatures could stop a piece of legislation from passing and hold it up for potentially — you say a couple of years; under this process it could be much longer than a couple of years.

Mr Colin Brown: No, we've suggested that you have a time line on it. I don't think there's any need to think it would go longer than that. But if you felt that —

Mr Stockwell: Okay, but a couple of years roughly, so you could actually settle a deal with the union, pass it through the legislation, change it and that wouldn't be implemented for a couple of years, on 150,000 signatures.

Mr Colin Brown: If 150,000 people rose up very quickly in anger about it, yes, that's right.

Mr Stockwell: They don't have to rise up in anger. All they've got to do is sign a piece of paper.

Mr Colin Brown: Yes.

Mr Stockwell: So 150,000 could stop dead any initiative taken by a Legislature, duly elected, and hold it up for literally — you're saying a couple of years; I would say potentially to put one of these together it could be significantly longer than a couple of years, but at least a couple of years, and cost us, if it's an initiative as far as dollars and cents are concerned, investments or so on, cost the taxpayers money by holding up investment

packages. Say they wanted to hold up a bill that we often debate, an appropriation bill that we have, they could hold that up with 150,000 signatures and cost millions of dollars to the taxpayers.

Mr Colin Brown: What if the 150,000 signatures had held up the budgets of the previous government? Or the Jobs Ontario program? It could go both ways.

Mr Stockwell: I'm not suggesting this for a minute. I'm not saying they couldn't do that. I'm asking you. This is your pitch and I'm trying to get you to commit that you understand what it is you're saying. So 150,000 people signing a piece of paper could literally, through holding up appropriations, which is just a straight appropriations bill, could cost the taxpayers millions and millions and millions of dollars, all the taxpayers.

Mr Colin Brown: I would think that the people who signed that paper, or given that scenario of yours, if it was some economically minded legislation — one of the big arguments about the vote on Sheila Copps was the cost of a by-election. No one is going to support something, particularly if it's some sort of fiscal legislation, if it's going to end up costing the government a lot of money.

Mr Stockwell: Oh, you've never been elected.

Mr Colin Brown: I think your example, Mr Stockwell, is a little bit severe. But, as I said, this is presented to you as a suggestion, and in principle I think it's a good way to stop some very damaging legislation from going through.

Mr Phillips: I'm going to somewhat follow up on that just to make sure I understand what the Ontarians for Responsible Government's intent is here. If 3% of the people on the voters' list sign a petition, as I read your proposed legislation, there is no option but for the elections office to call for a referendum, and that's a \$40-million pricetag. Mr Stockwell is probably right: the number of the electorate is between five million and six million, so 150,000 to 200,000 people.

Let's hypothesize. The government has said it's going to close a bunch of hospitals, for example. I gather, under your bill, a group of citizens could draft a bill saying, "Don't close the hospitals" and get 200,000 signatures, and then there would be a public referendum on that. There is no limit to the number of public referenda under your bill here, as I understand it. So 3% of the citizens can demand a referendum on issues that they view as important, and we could have quite a number of referenda. Is that the intent of the bill?

Mr Colin Brown: First of all, your \$40-million pricetag, ideally you would be having these — we haven't really explored the electronic capabilities of this —

Mr Phillips: Whatever it costs.

Mr Colin Brown: We may be able to do it for a lot less than that but also at times, as I said, when other elections are being held, so hopefully you don't have single events. But, yes, you've got the reading essentially right. You could have a situation where there could be one referendum on an issue and it could move to another. In the Swiss example, it took them three attempts to get their GST passed. I don't think anyone in Switzerland is sorry that it took that long to introduce a new tax.

On the major issues, if you look at examples in the States, examples in Australia, the fundamental issues of either tax and expenditure limits or government control of deficits or whatever, these numbers track pretty much consistently. The more detailed an issue, the more finite an issue, the more specific an issue, that's where you're going to get the chance of movement on the Yes and No sides on these referendums. But I'm just saying to you that not every issue would be unresolved. In fact, I think referenda would solve a lot of issues very quickly.

Mr Phillips: It seems quite unworkable to me, your proposal. With all due respect for how much work you put into it, knowing that there are on any issue a number of people — and the government has said it's going to be doing some very tough things. There are a number of government initiatives — property tax reform clearly would be another — I can see quite a number of issues that at least 150,000 people in the province would want a referendum on. That is your intent, to permit that and to permit the holding up of government initiatives while that takes place?

Mr Colin Brown: Yes, because it's fundamental, in my assumption, that a lot of what comes out of this building is bad, not good. So if certain things are held up, I think that's fine. I would much rather have the public with a lot of power in its hands than as spectators.

The Chair: Thank you very much, Mr Brown, for your presentation. We appreciate your input and advice.

CANADIAN TAXPAYERS FEDERATION

The Chair: Our next presentation is the Canadian Taxpayers Federation. They are represented today by Mr Jason Kenney. Welcome, Mr Kenney.

Mr Jason Kenney: Thank you, Mr Chairman. First of all, I apologize for being late this morning. I was actually doing a talk radio show on these hearings and there were so many enthusiastic callers that I couldn't get off the show in time to get here. But I am pleased to be here and I think you all have received our submission. I have extra copies, if not.

1130

Our organization is a national non-profit, non-partisan educational and advocacy organization with about 80,000 members across Canada and five active provincial affiliates, one of which is the Ontario Taxpayers Federation, whose executive director, Paul Pagnuelo, you heard from yesterday. I will not reiterate what Mr Pagnuelo had to say, who was I understand general in the nature of his comments addressing the principle of direct democracy and rebutting some of the common objections, as Mr Brown just did so eloquently as well. Rather than restating those general principles, I'm here to present a comprehensive and, I think, quite detailed draft bill for binding direct citizen-initiated and government-initiated referenda in Ontario.

But before I get to that, I simply want to say how excited our organization is that these hearings are taking place and that this government has indicated with this initiative its basic faith in the common sense of common people. It really is very refreshing.

I can tell you that our movement started six years ago out of the depths of public cynicism that Canadians were feeling and experiencing in the early 1990s, the conditions of which Mr Brown just described, the GST, the Meech Lake accord and so forth. Our movement grew spontaneously out of a sense among many people — common, ordinary, middle-class, law-abiding, taxpaying Canadians — that they were disconnected and alienated from their political representatives and institutions and that something dramatic had to be done to regain control of this country's destiny, and that something had to be some kind of concrete, systemic reform to our political system, namely through direct democracy.

So the basic founding principle or premise of our movement was to fight for the adoption of meaningful and effective direct democracy mechanisms across Canada. I can tell you it's been a long, hard fight. We've made very modest progress in some of the western provinces. The Saskatchewan plebiscite and referendum bill is a direct result of the efforts of our organization, and the British Columbia initiative and referendum bill is in part a substantial result of our efforts, although both of those bills are profoundly deficient and are virtually unworkable.

It's with great gladness that we come to Ontario to see a government taking the initiative, as it were, in moving towards direct democracy rather than having to be pushed reluctantly by its citizens. Not to overstate the matter, but I think if this Legislature decides in its wisdom to adopt a workable system of binding direct citizens' initiative in particular and other associated forms of direct democracy, it will be launching what may be the most important and dramatic reform to Canada's political institutions and system of democracy certainly in the latter half of this century.

I find it remarkable that this appears to many people to be a sleeper issue, but I can tell you that if a system of workable direct initiative comes into place here in Canada's largest province, other provinces will follow. I know that because I track this issue very closely. If you set a precedent, other provinces will follow and I think ultimately you will help to launch a new era for democracy in Canada.

It's very important that you get it right in whatever you come up with, and that's why we have put a great deal of effort into drafting what we think is a thoughtful and considerate legislative and statutory approach to binding initiative.

I'm not going to restate the rebuttal to objections that other people have because I think they all boil down to one basic objection that the opponents of direct democracy will not publicly admit, which is that they simply do not trust the wisdom of common people. I would like to paraphrase the famous statement of William F. Buckley Jr that I'd rather be governed by the first thousand people listed in the Toronto phone book than the faculty of Harvard University, or the University of Toronto, for that matter. Or to put it alternatively, I'd rather be governed by 10 million Ontarians in their wisdom than by 130 legislators, as competent and wise as they may be.

Of the various forms of direct democracy that are discussed in the discussion paper, we think the most

important is the binding direct initiative and that's what we deal with here, although we do want to make one point that I think my colleague Mr Pagnuelo mentioned yesterday. We think there's a critically important form of direct democracy; I'm not going to get into detail, but it's what we call taxpayer protection legislation. Of course, the government has publicly committed to it in the last election and we're still waiting for its passage. Essentially, that is a simple legislative requirement that any proposed tax increases or new taxes be submitted to voters for approval or rejection in a binding referendum.

It's not rocket science. The Manitoba Legislature has already passed legislation modelled after a draft bill that we tabled here in June 1994, when it was received with an incredible silence. Hopefully, this government will decide to move on that very simple and public commitment that it's made.

Let me go through the submission we have. The bill we have in the proposal before you actually starts at page 16 and runs through page 33. Before that, there is a more readable synopsis of the bill.

The process that we propose begins with a sponsor. Essentially, we have two forms of direct democracy in this bill: One is initiative and the other is a government referendum.

Through the initiative mechanism, any elector can act as a sponsor and can make a proposal to the chief electoral officer. I guess it's called the chief elections officer here in Ontario. This proposal would include the name of the sponsor, an affidavit saying he's an elector, a draft of his or her proposed bill, a draft of the proposed initiative petition to be circulated and the proposed referendum question, together with a filing fee.

He'd submit this to the chief electoral officer, who would have the ability under this act to make use of expert counsel, be it the legislative counsel here, in helping to make recommendations to the sponsor about amending his proposed bill, initiative petition or referendum question to clarify his intentions.

One of the things we're trying to do in this bill is to marry the deliberative features and aspects of the parliamentary system with direct democracy. We don't want to throw the baby out with the bath water. We don't propose some kind of wild, American-style direct democracy, which is completely disconnected from the deliberative process of the Legislature. Rather, we think the two can be married. Right from the very beginning we suggest that the sponsor have access to expert opinion through the chief electoral officer to amend the bill if he decides.

But the sponsor ultimately runs the process. He cannot be compelled to make amendments to his draft bill by the chief electoral officer, although the chief electoral officer can disallow his bill if the sponsor proposes a bill that falls outside the proper subject matter; for instance, if it's not within provincial jurisdiction, if it contravenes the Charter of Rights, if it is a bill that would impose a tax or impost, a power which is by convention reserved to the crown, to the executive branch of our government. He could also reject the proposal if the question was not clear, if it was not impartial and if the initiative petition didn't meet the requirements set out in the act. So right away, the chief electoral officer has a veto over inappro-

priate, sloppy or frivolous initiative petitions. But the sponsor has a right of appeal to the trial court here in Ontario if he objects to the chief electoral officer's ruling.

Assuming that he makes a proposal to the chief electoral officer, the chief electoral officer gets this advice from legislative counsel and other authorities and then approves the sponsor's application and proposal, the sponsor then is given authorization to commence collecting petition signatures. We are proposing a maximum threshold of 10% of votes cast in the immediately preceding provincial election. That's high because we want to prevent a proliferation of complex, frivolous initiatives. You know that people object, for instance in the state of California, to having 20 different referenda on the ballot in a given month, in a given voting year.

1140

We're proposing that the threshold be set high enough that it's difficult but not impossible to obtain, and we've looked very closely at all the thresholds in other jurisdictions. You'll see in appendix B on page 34 a summation of all the thresholds in United States compared to the ones we're recommending here in Ontario. At 10% of votes cast in the previous election, the current threshold for a successful signature gathering effort would be 420,000 signatures, which would be equivalent to 6.3% of registered voters as opposed to votes cast, and we would give the sponsor one year, 360 days, to collect those signatures.

Let me contrast this, if you don't mind, to the ridiculous excuse for an initiative bill passed by the NDP government in British Columbia which requires 10% of eligible voters signing the petition in each of the 75 ridings of the province, each and every one of the ridings, within 90 days. This is a joke, and if you folks come up with those kinds of thresholds, you will probably have the same level of credibility as the government in B.C. currently does when it comes to direct democracy. I advise you to pay close attention to these thresholds. They are the key. Set them high enough so that they prohibit frivolous initiatives but low enough so that they are usable and accessible and I think we've pretty much hit the mark here, but there is some flexibility.

The sponsor collects 420,000 signatures within a year. We have some regulations built into the bill. The petition goes to the chief electoral officer, who reviews the petition. He must survey at least 5% of the signatures on the petition to verify their validity. That's standard procedure in many American states.

In terms of the petition-gathering, we require full disclosure of the financing of a petition-gathering campaign and the expenditures of such a campaign. We also prohibit one of the features that has led to the greatest abuses in the United States, namely the ability of sponsors of initiative bills to hire for pay sort of mercenary petition signature collectors. In some states they get \$1 a signature and they go out there and use high-pressure tactics.

The taxpayer movement in the United States strongly disagrees with our group on this point. They believe you ought to allow sponsors to hire people. We think that leads to an abuse of the system and we therefore recommend that be prohibited in the regulations or in the act itself.

Assuming that the petition is in order, the chief electoral officer will validate the petition and notify in writing the sponsor, telling him that the petition, if it has met the threshold within 360 days, is valid — excuse me. I have to back up one step. When the CEO authorizes the proposal and petitions begin to be collected, the chief electoral officer must also notify the Speaker of the Legislative Assembly, who then tables a copy of the proposed bill, the proposed initiative question, and other relevant information with the Legislative Assembly and the Legislature may then, at its discretion, hold hearings on the proposal through the appropriate legislative committees. That committee, or those committees, may hold public hearings and report back with recommendations within 180 days.

The sponsor may decide to accept all or part of the amendments recommended by the Legislature, but need not do so. He can continue with the act as he initially proposed it. This again provides the Legislature with the ability to review in detail the proposal, and it involves this kind of deliberative process of the Legislature. It doesn't write the Legislature or the MPPs out of the process.

To jump forward to the point where the petition has been authorized: Then the chief electoral officer notifies the Lieutenant Governor in Council, who must within 70 days essentially draw up a writ or make an order announcing that the question will be put to the voters in a referendum. We propose that there be an annual referendum date set at the second Monday of each October or, alternatively, that the Lieutenant Governor in Council may choose, if it's appropriate, to hold the referendum concurrent with the provincial election, which would save money in terms of administration costs as experienced in the plebiscites held in BC and Saskatchewan in 1991, which respectively cost \$250,000 and \$560,000.

The cabinet then orders the referendum, and we have guidelines within the act for the conduct of the referendum campaign. We again require full disclosure on financing and expenditures but specifically prohibit spending limits in this act because they would contravene the freedom of expression rights guaranteed under the charter and which have been found consistently in recent judicial decisions in Alberta.

If the referendum passes with 50% plus one vote in at least 50% of the electoral districts in the province, the chief electoral officer would declare the referendum to be successful and would transmit it back to the Speaker. The minister responsible for the subject matter affected by the proposal would be required to introduce for first reading the bill, as passed in the referendum, and the Legislature would then be compelled to pass that bill. I'll close on this. This is the most important part of the bill in terms of the application in the Legislature. What we require is that the Legislature pass the bill within I think 30 days of reconvening.

This raises important constitutional questions, and I'd be happy to answer those in the question period here, but you will find in the synopsis portion of our presentation, at page 13, section VI, "The Issue of Constitutionality." This section, this extensive analysis of the constitutional-ity of binding direct initiative, has been written by Mel

Smith, QC, who is one of the leading constitutional authorities in Canada, a former constitutional adviser to the government of BC, and he, quoting various judicial precedents and authorities, constitutional authorities such as Hogg, concludes that the Legislature can indeed bind itself to the result of the referendum.

There's much more in here, but that gives you a brief survey of the recommendations that we are making. I'll be happy to entertain any questions.

Mr Froese: Thank you, Mr Kenney, for a very detailed report. A lot of submissions so far have lacked that detail in specific items and issues.

My question is not really with regard to the report. You said you came late because you were on a talk show. I'd like to know, in a minute or two, what the public said to you on the talk show, if you can give a synopsis.

Mr Kenney: This morning I was on a talk show —

Mr Phillips: On 640.

Mr Kenney: That's right — a good listener there. All the callers enthusiastically supported initiative. I will admit though, Mr Phillips, that on CFRB last week not all the callers were supportive. I've probably, over the last six years, done several dozen talk shows on this issue and I can count on two hands the number of people who have objected. Radio is not infallible but it is a pretty good reflection of what the polls show.

Polls that have been taken, not nationally that I'm aware, but at least in western Canada, show 85% to 90% public support for both initiative and recall. This was tested formally in October 1991 in British Columbia, where the issues of recall and initiative were put on the ballot in a sort of plebiscite-cum-referendum by the Socred government and received 85% support for initiative and 89% support for recall. That's consistent right across the country with the polling data I've seen. That is as close, as any pollster will tell you, as you come to unanimity on any public issue.

1150

Mr Hastings: Mr Kenney, what specific public policy issues do you think ought to be entertained in referenda, unlike the Ontarians for Responsible Government, who took a more shopping-type list to things? Do you foresee any type of regional use of referenda in Ontario?

Mr Kenney: Yes, and to answer the second question first, I think many municipal ratepayer and taxpayer groups that are appearing before you have that as a particular concern — the application and use of referenda and initiative at the municipal level. Because we're a national organization — it took us enormous effort to put together this draft bill without proposing amendments to the municipal government act here — I'm not going to get into that in detail; but yes, we think this ought to be applied at the level of municipal government.

I don't know what the status is in Ontario, I'm afraid. I apologize. We advocate money bylaws at the civic and municipal level which would allow citizens to have effectively a popular veto over money bylaws passed by their local authorities. So the simple answer to your question is yes, absolutely; we think it ought to be exercised at the local level.

The first question was, should this cover any particular subject matters? We leave the subject matters wide open

to the public, whoever wants to initiate a referendum on any issue which (a) does not contravene the charter, (b) falls within provincial or, in the municipal case, local jurisdiction, and (c) does not impose a tax or impost. The last condition is necessary given the crown's prerogative in terms of money bills, although the voters could initiate a referendum challenging a money bill passed by the Legislature — a new tax or impost. So we see this being broad-ranging. I'll leave it at that.

Mrs Lillian Ross (Hamilton West): I'm just a little unclear, not having read this whole document. Can you clarify something for me? Are you suggesting that the public would actually draft up legislation, and if it is passed by a referendum, the Legislature has no choice but to implement that legislation?

Mr Kenney: Yes. This is really the key aspect, the central aspect of our recommendation. The question you have just asked really dwells on the difference between indirect plebiscitary initiatives, that is to say non-binding, indirect initiatives and binding, direct initiatives. As far as we're concerned, there's a world of difference between the two. We do not think there is any point in the Legislature here passing an initiative bill, like the one in Saskatchewan, which allows a certain number of voters to initiate a question to be held for a plebiscite which is not binding on the Legislature.

It's an insult to voters to ask hundreds of thousands of people to become active in signing a petition to call for a referendum and the result of that referendum not to be binding, even if it has majority support in a majority of electoral districts across the province. For it not to be binding is a bad joke, as far as I'm concerned, and the only rational reason, I think, why you wouldn't come up with a binding initiative is that constitutional objections have been raised to that. We think we have addressed those constitutional objections here.

Mr Phillips: I'm interested in your proposal here because it looks like it contradicts your agreement with Mr Harris of a year ago. You may remember the old taxman's bill, the taxpayers —

Mr Kenney: Yes, I have it right here. I carry it in my wallet, Mr Phillips.

Mr Phillips: The reason I raise it is because I refused to sign it because I didn't agree with it, but the government signed it and you signed it. Your first pledge here is: "Make any increase in existing tax rates or new taxes subject to approval by the voters of Ontario in a binding referendum." That, I assume, was the taxpayers federation's policy. That is what Mike Harris — I remember the big ad with you and he signing it and it certainly got a lot of votes for the Conservatives. It cost us a lot of votes. Am I interpreting your position today correctly, that you are not advocating that any longer?

Mr Kenney: No, you are not interpreting that accurately.

Mr Phillips: Where in this proposal — as I read it: "And while the assembly may put a bill to referendum...." Does your proposal here make the proposal you are proposing today?

Mr Kenney: No. I'm sorry. I obviously didn't make this clear enough. At the outset I said that before I got

into this initiative bill that we were still waiting for the enactment of the taxpayer protection act —

Mr Phillips: But your referendum proposal is inconsistent with —

Mr Kenney: If I could just answer that, it's a misunderstanding, and I apologize if I helped to create it, but I don't think it's inconsistent. One could write into this initiative bill, easily write into it, a requirement, what we call the taxpayer protection requirement, that any bills introduced in the Legislature proposing an increase in taxation or the adoption of a new tax must be submitted to voters for acceptance or rejection in a binding referendum. We could have written that in here. Its absence does not suggest that we backed off on that. We thought that ought to be in a different bill, namely, the taxpayer protection bill, which is far more comprehensive. It deals with the reduction in the debt, penalties for politicians, so we didn't think it was appropriate to include that provision in the initiative act. We think they're two different statutes that are mutually compatible and not mutually exclusive.

Mr Phillips: Frankly, you are inconsistent and —

Mr Kenney: I don't see how, sir.

Mr Phillips: Your proposals today do not incorporate what you signed a year ago. That is a fact, that you are now suggesting a different approach, that instead of saying "must," you are saying "may." That's fine if you want to do that and I understand how you can change your mind.

Mr Kenney: If I can make it as simple as possible, I am proposing that this Legislature pass two bills that we have submitted in complete draft form, the initiative bill before you today and the taxpayer protection act, the principles of which Premier Harris signed off on both bills. They are mutually compatible, not mutually exclusive.

Mr Phillips: I challenge you then, when we have more time, because I think you are wrong.

Mr Morin: The responsibilities you give the chief election officer are akin to the role of an ombudsman in reality because you don't want him to be perceived as a person who is politically slanted or would be influenced by political people. How would you appoint a chief election officer? How would you choose him?

Mr Kenney: We're confident it would be the same chief election officer that currently exists under the authority of the Election Act, who is, I assume, in this province an officer of the Legislature, as he is in other provinces, and is therefore independent, is not — at least theoretically — subject to political pressure from the government or any other party. That independence is critical, which is why we suggested somebody who is an officer of the Legislature.

There are other options, you know. In some of the earlier initiative bills that existed in western Canada in the early part of the century, the key person in the process for the government wasn't the chief election officer but was the Clerk of the Legislative Assembly or, I think in the case of the BC statute passed in 1913, it was the Speaker of the Assembly. In many of the American states it's a state officer known as the Secretary of

State who handles these issues. You need to find somebody who is relatively independent and who is non-partisan and is accountable to the entire Legislature. We suggested the elections officer because it just seemed the most logical person in the current system.

1200

Mr Phillips: You suggest in your proposal on page 11 that you worry about the government being able to buy a referendum vote. What do you mean by that?

Mr Kenney: We mean that we're concerned that governments not use public funds to advertise in favour of or against the passage of a particular initiative. The government's resources are so considerably larger than those of a group of citizens that this is a danger that needs to be considered.

Mr Phillips: Does it logically follow we should put restrictions, then, on other well-heeled groups?

Mr Kenney: The government's not a well-heeled group; it's accountable to the public, funded by the public and ought not to be taking sides on a contentious public issue.

Mr Phillips: That's different than buying it.

Mr Kenney: If you want to cut a cheque to the Yes or the No campaign on an initiative referendum, you're welcome to do so as long as you're not using my money.

Mr Phillips: Okay, I understand. You're saying that money can buy votes, but you just don't want government money doing it.

Mr Stockwell: He's got you there.

Mr Kenney: No, I think what we say elsewhere here is that — as Mr Brown said, the case of the Charlottetown accord, one side outspent the other I would think by a factor of 40 to one, or something like that, and it clearly didn't have an effect. So no, I'm not concerned about the effect of money on the process so much. There have been studies done on this in California, where initiative is frequently used, which show that money is a minor factor in the outcome of referendums, not a major factor. So I'm sorry; that's not the impression I meant to leave you with.

Mr Silipo: Is it fair to say that on the other issue you talked about at the beginning and in response to Mr Phillips's question on the taxpayers' protection subject matter, that you're still waiting for that legislation to be introduced and passed by this government?

Mr Kenney: Yes. As I said, we're eagerly waiting for it.

Mr Silipo: I presume there's an expectation on your part that this will be done by the government.

Mr Kenney: We've received continued assurances that this is the case and we've been told that this committee is in part dealing with that issue, although I will point out that the pledge was for immediate passage, and immediate passage hasn't occurred. We have written to representatives of the government expressing our dissatisfaction with that.

Mr Silipo: Is that why, when you deal here in terms of referenda and the subject matter they should cover, you say citizen-initiated referenda would not be able to cover money bills?

Mr Kenney: Where does it say that?

Mr Silipo: On page 7 of your presentation it says, "Citizens may not initiate money bills; that power is left strictly to the Legislature."

Mr Kenney: Yes, "may not initiate." They can deal with money bills if they want to repeal a government money bill, if they want to repeal a tax, but they can't initiate a tax.

Mr Silipo: So a citizen-initiated petition or bill or referendum under the auspices of a bill would be able to take a part or all of a budget presented by a government and say, "We want to do something different."

Mr Kenney: If there was the imposition of new taxes. But again, if this taxpayer protection act were passed, there would be a requirement that referenda be held on proposed tax increases anyway.

Mr Silipo: That's why I asked you if the reason you're taking this position here is because you're expecting those issues will be covered off in that other legislation.

Mr Kenney: Yes, we see the two as being combined, in a way.

Mr Silipo: What — I think Mr Stockwell was interested particularly in this — in your view would constitute a money bill? Is the introduction by the government of VLTs a tax that would or wouldn't be subject? Is the introduction of casino gambling something that would be considered from your view to be a tax and therefore, either under the referenda or under the other provision, would have to be covered and approved by a public vote?

Mr Kenney: We do have a definition of "tax or impost" at page 18, which is not comprehensive: "any direct or indirect revenue-generating measure employed by the government...including

- "(a) excise taxes,
- "(b) value added taxes
- "(c) income taxes
- "(d) corporate and business taxes
- "(e) import duties, and
- "(f) licensing fees."

We also have a definition of that in our taxpayer protection act. I'm not going to be able to find it right here, but we have defined what we think that term refers to.

I don't know; we haven't defined it as such and I don't regard gambling revenues, lottery revenues, as taxation. It's a voluntary form of revenue and that by definition is not a tax, in my view at least.

Mr Silipo: So where government chooses to impose any of these other taxes that you have listed here on page 18, what you're saying is you would still expect there would be an ability by the public to vote on that through a referendum before they would be approved.

Mr Kenney: Yes, that's right.

Mr Silipo: But on the other hand, if a group of citizens wanted to initiate either an increase or a decrease in a particular tax, they wouldn't be able to do that.

Mr Kenney: They would not be able to initiate a referendum which would impose a tax or impost.

Mr Silipo: I don't understand the logic of that.

Mr Kenney: The logic is consistent with the parliamentary system, which reserves the right to initiate money bills to the crown, to the executive branch of

government. This was reflected in the first four direct legislation statutes passed in Canada in the four western provinces and was a requirement of the courts who reviewed this issue in 1915 or something in Manitoba.

Mr Silipo: I understand that rationale, but I don't understand why you're also expecting the government to pass legislation concurrent with this or at some other point, or in your view they should have passed it already, that says a government can't increase any of those taxes without going back to the people and having a referendum. The two things seem to me to be contradictory.

Mr Kenney: I took formal logic in college. I don't see that there's any contradiction there. On the one hand, we're saying nobody but the government can initiate a tax, but if the government chooses to initiate a tax, it must be approved by the voters.

Mr Silipo: Then given that you want the voters to have greater powers, why couldn't the voters on their own initiate, under your proposal, a referendum that says, "We would like to increase taxes by whatever and devote that taxation to this service"?

Mr Kenney: Again, because in our parliamentary conventions and in our system of government, that is a power exclusively reserved to the executive branch of government.

Mr Stockwell: But the whole thing is exclusively the government. This is brand-new.

Mr Silipo: You're suggesting in some cases it's okay for that power to be shifted over, but in other areas it's not.

Mr Kenney: I would encourage you to read the judicial precedents that exist on this issue. This we came up with on advice from the lawyers who looked at this.

Mr Silipo: No, I understand your defence of why the Legislature should continue to be vested with that power. I'm not arguing with that. I guess I'm taking a little bit of exception to the fact that you're saying even though that exists, you expect the government of the day to not proceed with implementing and exercising any of its power that you say it has and should continue to have, unless and until it goes back to the people through a referendum. But on the other hand you're saying you don't want that same public to have the right to initiate any of those measures, whether in favour of increasing taxes or decreasing taxes. I don't think it flows.

Mr Kenney: Let me put it to you this way, sir: If it was our view that you could constitutionally give voters the power to initiate taxes or impost, I wouldn't object to that, but we've had legal advice based on the judicial precedents that exist in Canada on this, based on legislation that goes back 80 years in the western provinces, that you can't do that. That's why it's not in this bill.

The Chair: Mr Kenney, I regret to say that I have to cut this discussion off. Thank you very much for your presentation. We appreciate your interest in travelling to Ontario to speak to this discussion.

Mr Kenney: Mr Chairman, on any of these issues, we have done a lot of research. I'd be happy, quite honestly, to provide more information on it. We have legal opinions and such. I'd be happy to share with any members who would like the information.

The Chair: Thank you very much.

I'm concluding now our discussions this morning. We'll go into recess until 1 o'clock. I would remind all members that we start at 1 o'clock at the Whitney Block on the fifth floor, room 5540. I look forward to that with committee members. The committee is in recess.

The committee recessed from 1209 to 1308.

TED WHITE

The Chair: The committee is called to order. We are continuing our public hearings on the issue of referendums and to what extent the government can make use of them. We have with us today, through a teleconferencing facility, Ted White, member of Parliament for North Vancouver. Thank you very much for coming in, Mr White, and we look forward to your presentation.

Mr Ted White: Thank you very much. I am the member of Parliament for North Vancouver. I'm also the direct democracy critic for the Reform Party of Canada, so the initiative and referendum are my areas of expertise, hopefully.

One thing I'll do before I start the rest of the program is to mention that there was an announcement in BC today, which some of you may have heard, that a group has started an initiative, a petition in BC, to try to put a stop to bear hunting in the province.

It's a good example of how unworkable BC referendum legislation is, because these people have to collect 10% of the province in the form of signatures within 90 days, and that includes 10% of every riding. That's practically unworkable.

In New Zealand, for example, which is the country I'm from and which now has citizens' initiative and referendum, they only have to collect 6% of the population in one year. It's really a massive difference and illustrates very well how New Zealand has actually established workable citizens' initiative and referendum. BC has unworkable citizens' initiative and referendum legislation.

I'm rather hoping, and it seems like there are good vibes coming out of Queen's Park there, that your government is very serious about having workable legislation. I'm not going to labour through the presentation at length, because I see that you have the text of the full presentation on your desks. I'd like to just highlight a few areas which I think are very important to consider.

I would hope, if your government is really serious about this project, that you will err on the side of democracy. If you make a system that's a little too easy to use, the citizens will soon tell you it's too easy and they'll give you permission to tighten it up a little, but if you start off with something that's unworkable, all you'll do is increase the cynicism, and you'll never have anything that's worth using.

Everybody thinks, first of all, that Switzerland is the place we should look to for some examples of referendum, and also California. The country of Switzerland and the state of California are often the target of criticism as well. You often hear comments in Canada, for example, that "We don't want to be running the whole place on referendum." I don't think anybody is suggesting that at this point. Certainly for Canada, what I would like to see and what I know the Reform Party would like to see and

what I hope you would like to see is that at least the citizens will have some additional input into the system, that when they choose to, if there's something really pressing, they'll be able to put it before the government and then subsequently a referendum.

One of the criticisms of the Californian model is that there are numerous referendums, far too many for anyone to keep track of. It seems that part of that problem is created by the fact that in California you can actually buy signatures — there are companies that are set up specifically to buy signatures for the petitions — and they'll pay as much as \$1 for a signature. The legislation which I have put together, or the draft legislation which I'll be introducing to the House of Commons probably next week, is based on the New Zealand system, which does not permit the buying of signatures. Probably most Canadians would feel more comfortable with a system that prohibited the buying of signatures. The purists would argue that any system to start an initiative is valid, but I think comfort level would be an important part of this legislation.

In Switzerland, it's important to note that as little as 15% of the population actually turn out to initiatives, and there are as many as 20 a month sometimes when they're held in the various cantons. The Swiss don't think it's a problem if only 15% turn out; they still take the result seriously and they enact the laws. I personally also don't have a problem with only 18% of the voters turning out. To people like myself who believe in direct democracy, I would rather have a system and I know the Reform Party would rather have a system that allows that 18% of very conscientious, very interested voters to have some input into the system, and if the majority seem to be quite happy for that 18% to be involved, then that's fine. If the 18% manage to push through something that the majority don't like, it's a good lesson to them that they must be involved in the process and that they're going to have to get involved in reversing a bad decision.

To put it all in perspective, around 65% of voters usually turn out in an election and many MLAs or MPs actually win their ridings with maybe 35% to 40% of the vote, so if you take 35% to 40% of those 65% of voters, it means that you or I perhaps are being elected by something like 26% of the eligible voters. If anybody is going to argue that a low turnout on referendums isn't valid, they must surely argue that a low turnout or a 26% vote for an MLA or MP is also not valid. I've never heard any successful candidate argue that they wanted their election reversed based on getting only 26% of the vote.

In the end, I think it all comes down to whether we as politicians have the political will to go ahead and do this, to take this project and turn it into a reality. Without the political will, the enactment of practical initiative and referendum legislation simply isn't going to happen.

When I speak at public meetings on this issue I often quote Edmund Burke — and I'm sure you're all familiar with him, a politician of 220 years ago — his famous quote, and I will quote him word for word: "Your representative owes you, not his industry only, but his judgement; and he betrays instead of serving you if he sacrifices it to your opinion." That quotation is often used

by critics of initiative and referendum. Of course, Mr Burke made his statement over 200 years ago when we didn't have technologies available that helped us to spread information the way we do today. The level of education was low, and it probably would have been doing people a disservice to expect to take their opinion to make decisions about international affairs, for example.

But in the information age of the 1990s I would like to see Mr Burke's quotation changed. I'd like to see modern politicians saying, "Your representative owes you, not his industry only, but also his commitment to alert you to the affairs of government that affect you, so that you may become informed and so that you may instruct him how to represent you."

Unfortunately, in Canada, there hasn't been the political will, hopefully until today, to modify the old-line party system, which has such rigid controls over its MLAs and MPs. As I mentioned earlier, I sincerely hope that the Ontario government is serious in proceeding with a workable system, because perhaps some of you are going to have to accept the possibility that from time to time you're going to have to vote contrary to your personal views.

That's something that has already happened to me in connection with the gun control legislation that was passed by the federal government. My party and I personally were against that legislation, feeling it had been sold as a crime control bill when it wasn't, but after an extensive discussion process in my riding lasting about nine months, eventually scientific polls indicated that 67% of my riding were in favour of the bill, so I voted in favour of that bill. There was no political fallout from that, because within the Reform Party itself, we are permitted to take those stands when we can demonstrate that we're representing our constituents.

That was a hard decision for me to make, to give up my personal beliefs in order to represent my constituents, and some of you may be faced with that in the future if you do indeed have initiative and referendum, and perhaps you need to start to thinking about that possibility.

Despite the reluctance here in Canada to introduce these types of tools, there are other areas with parliamentary democracies that are way ahead of us. I mentioned New Zealand in the beginning, and New Zealand will be holding its first mixed-member proportional elections this October. Some of you may have heard there's going to be a mixture of the old "first past the post" and also proportional representation. New Zealand is well ahead of us in terms of electoral reform, but they also introduced their citizens' initiative and referendum bill in 1993, so they've had a workable bill now for about four years. The New Zealand experience completely disproves the claims of the old-style politicians that initiative and referendum are incompatible with a parliamentary democracy. We've all heard those claims in the past, and frankly, they were red herrings. I heard them in New Zealand 20 years ago, but once the political will was there, New Zealand found a way, and Canada also can find a way.

As I also mentioned earlier, there is in your package on your desks a copy of the direct democracy bill which I intend to introduce as a private member's bill. There's

little chance that it will be passed, of course, but there's about two years worth of work in that bill, and hopefully it sets a pattern for the future at the federal level when hopefully the federal government will catch up with what's happening at the provincial level.

I should make a couple of comments about special-interest groups and initiatives and referenda. In New Zealand, with four years' experience under their belts now, there are some interesting cases that have come up. For example, in March 1995 a group calling itself the Next Step Democracy Movement started two petitions which it felt very confident it could get on to referendum ballots. One petition asked for guaranteed free access to medical care and the other one asked for guaranteed free access to education.

A number of traditional-thinking New Zealand politicians were terrified that these petitions would be successful. A number of fiscal reforms had taken place in New Zealand and there had been partial private alternatives put into the medicare system and certainly private alternatives in the education system, and these traditional politicians were afraid that this socialist group, I guess you would call them, would be successful with their petitions. And I know there are plenty of politicians in Canada who would be terrified that such a petition could start here.

However, the Next Step Democracy Movement had a year to collect signatures; they only had to get 243,000 signatures on those petitions from a population of about four million. You'd think that would be a pretty easy task, but in fact the New Zealand people proved to the politicians that they were plenty smart about this whole issue and realized there was nothing free about education or medical care. After an entire year, only 79,700 people had signed the medicare petition and only 61,800 had signed the education petition. That was less than 33% of the required number to put it to a referendum. Instead of being a threat to the government agenda, these two petitions actually ended up endorsing the direction the government had taken in its policies. So there's a possibility that these tools of direct democracy can be of tremendous benefit to government.

1320

I have used recall, which is a slightly different topic but relates to this, in my own riding when special-interest groups have come to me pressuring me for money for grants and their special interests. A good example would be the national women's monument. A couple of years ago, there was a group in my riding that was trying to get about \$2 million out of the federal government for the national women's monument in memory of those women killed by Mark Lepine in Quebec. The monument was to say "In Memory of All Women Killed by Men," so there was a major public outcry about the wording and major opposition to any grant by the federal government. I managed to successfully derail it by bringing a lot of public attention to the issue, and the group was very, very angry. They called me up on a conference call one day and said, "Mr White, we're going to get rid of you at the next election." I said: "Please don't wait till the next election. If you can get 15% of the people in my riding to sign a petition that I'm not representing the majority, I'll resign." They were very excited about that. They

asked for it in writing, which I gave them. To this day, I haven't seen even one page of signatures.

These tools are very powerful. I have found that the threat of recall has been a very powerful tool to dissuade special-interest groups from proceeding with their petitions.

The little town of Rossland in BC has found this to be a very effective tool, in terms of initiative and referendum. The town of Rossland, BC, has had initiative and referendum laws for some years now, and the citizens of that municipality have actually voted themselves tax increases twice, at least twice, once to pave the main street and once to improve their sewage treatment works. There is another example of how the criticisms of initiative and referendum are often misguided. These citizens, once they get the explanation of why a municipality wanted to do these things, were more than happy to see their taxes increased. On the other hand, they completely derailed the efforts of a special-interest group from Vancouver to start imposing its will on the citizens in terms of a logging contract in that area.

However, it is actually the New Zealand legislation that's probably the most relevant to what's happening in Ontario. It's designed for a more general application. The bill that's in your package is also more likely to be of help to you than talking too much about the municipalities.

Just wrapping up, because I'd like to leave you some time for questions, my bill covers a number of details:

A provision to prevent the government from proposing alternative questions which would influence the outcome. That's a danger, that the government tries to get the agenda back if it's not happy with the proposals.

A realistic threshold for signatures.

A reasonable time in which to gather those signatures.

A full disclosure provision so that those proposing the initiatives have to reveal the potential cost or the beneficial savings to the people of Canada.

A provision — and this, I feel, is quite important — for electronic voting using touch-tone technology. We're at the point now where companies like MT&T Technologies out of Halifax have perfected a really excellent system for electronic voting, and there's no reason we shouldn't be moving towards that. The state of Montana has already mandated electronic voting by touch-tone for school board elections, with paper ballots being the alternative. This is the way of the future, and it really cuts the cost dramatically and improves access for disadvantaged people or those with handicaps, the elderly, those who have trouble getting to the polls — very, very cost-effective.

Another provision is a prohibition on the gathering of signatures for profit, which I mentioned earlier.

One last provision is a cost-saving provision for the government to delay a referendum if it intends to implement the intent of the petition. I think that's an important aspect that will cut the cost when the government shows that it's clearly very serious about enacting what the people are asking.

One last thing, just in the wrap-up. It always amuses me that opponents of initiative and referendum will say that direct democracy would make MPs and MLAs into

trained seals who would blindly follow the instructions of their voters. In fact, as we all know, under the existing system MLAs and MPs, bless our hearts, are more like trained seals because we follow the instructions of the whip than we would ever be under the instructions of our voters. The presence of workable initiative and referendum legislation would make sure we had to work very conscientiously in our ridings and make sure that the public knew exactly what was going on, why we felt it was important to vote in a particular way. I think that's very important. The average Canadian voter is quite smart enough, certainly as smart as the Swiss voters, and smart enough to make correct decisions if they're given the correct information.

In the quick scan summary, which is in your package, I deal with specific questions asked in the Your Ontario, Your Choice paper, outlining problems or answering questions to do with the cost of referenda, the signature thresholds, informing the voters, deciding the outcome, and referendum operations themselves, particularly electronic voting.

I think that wraps up my presentation, so I would be pleased to answer any specific questions you might have.

The Chair: Thank you very much, Mr White. First of all, I think committee members would like to introduce themselves to you so you know who is asking the questions. I'm Ted Arnott, the Chair.

Mr Morin: I'm Gilles Morin, a Liberal member.

Mr Bud Wildman (Algoma): Bud Wildman, NDP.

Mr Silipo: Tony Silipo, NDP member.

Mr Jim Brown (Scarborough West): I'm Jim Brown, PC.

Mr Grimmett: Bill Grimmett, PC.

Mr Marcel Beaubien (Lambton): Marcel Beaubien, PC.

Mr Froese: Tom Froese, PC.

Mr Carl DeFaria (Mississauga East): Carl DeFaria, PC.

Mr Hastings: John Hastings, PC, vice-chairman of the committee.

Mr Morin: Mr White, you mentioned that you used more or less a petition to promote a referendum. Once the referendum has been agreed upon, a question has to be prepared. Who prepares the question, who evaluates the question that the question is correct, and who is that person who will make a decision that the question is properly posed and will not influence the people to make decisions which they wouldn't agree with?

Mr White: That's a very good question. What I've done with my bill to be put before Parliament is to follow the New Zealand lead, which is basically to allow the electoral officials to define how the question should be worded. There are some guidelines in the bill, so I won't go into detail here, Jim, but I will say that the basis of it is that in the end, you have to ask whether the people support or are opposed to enabling legislation.

One of the things that my bill does is that it forces the proponents of the initiative to prepare the legislation. They can do that with the assistance of their MPs or with their own funded lawyers, but there are certain guidelines they must adhere to, and then they must get into a process of informing the electors about the bill, what it

does, how much it costs. In the end the question will basically ask, "Do you support the bill or not?" and it quotes the long title of the bill, the long form of the title, so that it describes the content of the bill. The detail is in my draft legislation. As I said, I don't want to get into laboriously long answers here, so I would encourage you to check that out in there, Jim, and certainly contact me personally afterwards if you have some more direct questions.

Mr Morin: My name is Gilles, by the way, not Jim.

Mr White: I'm sorry. I couldn't hear it very well over the link.

Mr Morin: What about the frequency of the referendums? How many referendums would you have in a year? Also, would you talk about the cost of those referendums? We've been given figures from \$11 million to \$40 million, which is quite expensive. Of course, with the new technology we may be able to lower that, but I'd like to have your point of view. Also, if you have many referenda, it may become after a while a futile way of asking the opinion of the public. Let me explain. Let us say, for instance, that an issue comes out and a minority group finds that yes, this is a very important issue and manages to raise a lot of questions to the public and then the referendum takes place and we realize all of a sudden that we made a mistake, we should not have had a referendum.

1330

What I want to say is that a referendum is a very serious matter and it should not be used as a political tool so that the government has the ability to pursue its goals, that the government is stuck and says, "We'll go to the public because we want to make sure they are on our side." Do you follow me, Mr White?

Mr White: Yes, I do. There are a couple of questions in there. As to the cost aspect, we all say there is a cost of democracy; there is a cost of your salaries and mine under the present system. There will be a cost of direct democracy. As I mentioned earlier, it really comes down to political will, whether or not you want to do this, whether or not you are prepared to accept some cost, but certainly the use of electronic technology can dramatically reduce that cost.

In terms of the frequency, there is no evidence anywhere where initiatives and referenda are used that frequency is a problem. Particularly if we look at the New Zealand example, which is a good parliamentary democracy example, and certainly the town of Rossland, BC, which is another workable example at the municipal level, there is no evidence that the citizens are constantly doing initiatives and forcing referenda. They may try to take out petitions, but very few of them actually gain enough support to get to the referendum stage.

That brings me to the point you mentioned about, what if a minority manages to get enough signatures to force an issue to a referendum? I would have to say that it's no longer a minority issue then, and it never was. A minority issue will never get to a referendum. There is no evidence anywhere that they ever do. The example I gave in New Zealand was this socialist agenda I mentioned of free education and free health care, where they were incapable in a whole year of getting one third of the necessary signatures.

I think your fears are unfounded, based on the worldwide evidence and the worldwide experience. Besides, it really does come down to political will. If you want your voters to have a say in the process, you're going to have to accept their judgement on which issues should go to referendum.

Mr Wildman: Thank you very much. I appreciate your presentation. I must say, I guess as an old-line socialist, that I have some philosophical differences with you. But I'll preface that by saying that on fundamental questions related to the fundamental law of the country, I believe we should have referenda, recognizing that they are not as simple, though, as I think many believe. Obviously, a vote on a Constitution is usually dealing with a very complex set of issues, and a yes or no vote is sometimes difficult to encapsulate a person's views on the whole document.

The same, I would suggest, applies to a bill. If you say your referendum question will be, "Do you favour bill number such-and-such and the long title," if it is quite a simple, straightforward piece of legislation, that would be quite appropriate, but if you have omnibus legislation or even complex legislation, there may be parts of the bill that are acceptable to people and other parts that are not. In a political debate, a legislative debate, those matters can be dealt with. Wouldn't it be much more difficult to deal with those kinds of complexities in a simple yes or no vote?

Mr White: Under the form of initiative and referendum that are proposed in my private member's bill, since it's the responsibility of the proponents to develop the legislation, it really is their responsibility to explain the bill to the people. If they make a poor job of it, then they're obviously going to lose in their attempt either to get enough signatures or, alternatively, pass in the referendum. I think it's their problem to worry about that rather than ours as legislators. We have a role to play in ensuring that unbiased, factual information is made available to support or to work against the bill, but it must be unbiased and factual.

My experience is that there is a lot of very carefully thinking people out there who really do pay a lot of attention to these issues. During the Charlottetown accord referendum debate, in every household, in every cafeteria and restaurant across the country, people were talking about the issues. It's true that if you have too many issues on the one question, it becomes too difficult to answer. That's something you learn with experience, and I'm willing to trust the voters to prepare their bills and put it to our judgement.

Mr Wildman: In that regard, isn't it quite possible that questions of personality of the proponents and opponents influence the vote rather than it simply being a vote on the substance of the question? For instance, if you use the Charlottetown accord as an example, I would suggest to you that the unpopularity of Mr Mulroney and his government at the time was one of the factors — only one — that played a role in the rejection by many people of that question. How would you avoid that, and would you indeed have Yes and No committees for the campaign for a referendum?

Mr White: The referendum that you're talking about is a government-initiated referendum, which is very, very different to a citizens-initiated referendum. I would say that all of the work I have done is towards citizens-initiated referenda. I would never expect, based on worldwide experience, to see an issue as complex as that Charlottetown accord result from a citizens' initiative.

I could have a debate all day with you about whether or not it was influenced by whom, but my bill does not set up Yes and No committees funded by government. It's entirely up to the proponents and opponents to fight it out in the public arena and to get it on to the order paper.

Mr Wildman: I just would raise two other points. Your comment that in Switzerland about 15% to 18% of the population quite often votes in their referenda alarms me. And I don't accept your analysis that since only 65% of the population vote in the federal election in Canada and you might be elected with 35% of that, that you're only getting elected with about 26% of the vote as adequate, because the 18% doesn't compare to the 26%; the 18% compares to the 65%. So you were comparing apples and oranges. The 18% is a very small number to make decisions for the majority, and perhaps it indicates either that the process has become so old hat in Switzerland that people don't pay attention to it, are not interested, or that there really is not much demand for referenda in Switzerland by the majority of the population.

Mr White: It could well be that there are elements of everything you say in this referendum process, but in practical experience it seems from looking at the evidence worldwide that those who are opposed to the referendum question, such as minorities or special-interest groups, are more likely to be enthusiastic in their promotion of opposition to the thing and to fire up their supporters. The majority, who are usually quite happy to see the thing go through, just don't turn out to vote.

What I've done on page 2 of my detailed presentation is I've set out about five separate points dealing with low voter turnout. Because I know we're short on time and Mr Mitchell is here as well, I would ask you to read the points on page 2 of my detailed presentation which deal with the low voter turnout. Please feel free to contact me again if you would like to on that.

Mr Wildman: I would just say one thing. One of the arguments for direct democracy, so called, is low voter turnout and cynicism of voters. If we end up with low turnout for referenda, we've got the same problem. We haven't resolved it.

Mr White: Well, of course, as a person who truly believes in direct democracy, I would rather have 18% of the voters having a say than 295 people sitting in the House of Commons on some issues.

Mr Hastings: Mr White, could you give us some background as to the Rossland, BC, experience in terms of the money bylaws, or what type of bylaws can be revoked or citizen cancelled out in a referendum?

1340

Mr White: Unfortunately, I have no direct knowledge of the bylaws there. Mr Mitchell is sitting here and he's sort of nodding a little bit. He may be able to give you some more detailed information when he comes on. I do

know that some council members who have perhaps shown some interest in getting rid of the initiative and referendum bylaws have been promptly thrown out of office at the next election. So the citizens obviously like the process.

Mr Hastings: What can you tell us about the Montana state experience on school board elections on the tele-democracy approach, direct telephone by the new technology? Why did they only select school boards? Is it an experiment that they're attempting to see how it works?

Mr White: I don't have any up-to-date information on Montana to know whether it's been used very much. It was only put into state legislation last year, or early this year even. I don't have any direct information. MT&T Technologies, if they're making submissions, were probably following that more closely than I am. I will make a note, though, to see if I can get some more information for you on that particular issue.

Mr Hastings: Okay. One final item. Do you support the use of this technology in your bill Canada-wide, if your bill became the law of the land?

Mr White: Yes, I do. I have used the electronic voting technology in my own riding to carry out an electronic referendum in 1994. We used MT&T technology, we used the voters list from the 1993 election, and we issued all the voters with PIN numbers which were about 16 digits long, randomly generated by computer, and they could vote by touch-tone telephone during a set period of time on changes to the Young Offenders Act. It was very, very successful and proved the technology works extremely well. So I have put a provision in my bill for that technology to be used.

Mr Hastings: How was that financed? By corporate sponsorship or through your own pocket?

Mr White: It was partly sponsored through direct donations, partly out of my MP budget, and partly out of sponsorship from MT&T itself. The only question that remains at this point is whether the telephone companies have sufficient infrastructure in place to handle an entire province trying to vote at the same time. But my understanding is that the city of Belleville in Ontario has recently had a plebiscite on an issue using this touch-tone technology. You may be aware of it, and I know the mayor was just delighted that he could stand up and announce the result minutes after the voting closed.

Mr Hastings: Thank you very much for your answers, sir.

The Chair: Mr White, thank you very much for making the effort to present to us today. We really appreciate this. It's the first time we've used this technology and we found it very helpful to get your input on this issue.

Mr White: Thank you very much, Ted.

DAVID MITCHELL

The Chair: We'd like to call Mr Mitchell forward. Good morning, sir.

Mr David Mitchell: Good morning. Can you hear me?

The Chair: We can hear you very well. We've set aside half an hour for your presentation, Mr Mitchell. Thank you very much, first of all, for coming in. We look forward to hearing what you have to say.

Mr Mitchell: My pleasure. With the magic of this technology and the Ontario committee reaching out the way it is as part of this consultation process across the country, it's amazing that the whole issue of direct democracy should even be a controversy. If you can do this, then surely all legislators across the land should be able to reach out and consult using technology and using various means.

I'd like to talk to you this morning as a former member of the British Columbia Legislative Assembly who served as an independent member of our province's legislative committee that preceded the introduction of the British Columbia legislation, which is known as the Recall and Initiative Act. I'd like to offer you some reflections on the British Columbia experience. I only wish and my only regret is that you can't be here with us this morning or this afternoon on this very glorious west coast day, but I'm not supposed to say that. There's a conspiracy among all of us as British Columbians that we're not supposed to make you envious, so I won't go into that in any detail.

But I do really want to leave a very serious message with you today about the British Columbia experience, which is referred to in your consultation paper, which, I must tell you, I think is very good. It's a good consultation paper in the sense that it asks the important questions that need to be asked and it raises the key issues that must be addressed prior to establishing an effective referendum procedure. I should tell you that we had no such well-considered process in British Columbia.

Very briefly, let me explain. In 1990, a Social Credit government enacted a referendum act in British Columbia allowing the provincial cabinet to submit non-binding questions to the electorate. Unlike Ontario, British Columbia actually has a history of provincial plebescites and province-wide referenda which have accompanied general elections in the past. This new legislation, however, in 1990 formalized the procedure. Unfortunately, at the time there wasn't much discussion about the process of how this referendum act might be used other than the fact that there was a legislated commitment in British Columbia that any proposed change to the Canadian Constitution must be put to the people of British Columbia in the form of a provincial referendum. British Columbia is not alone in that. Other provinces have a similar provision, Alberta and Quebec being the two notable ones.

In the following election, in the autumn of 1991, the Social Credit cabinet went further. They added two referendum questions to the ballot. When British Columbians voted for their candidates of choice in the 1991 election, they were also asked two questions. Question A asked, "Should voters be given the right by legislation to vote between elections for the removal of their members of the Legislative Assembly?" Question B was, "Should voters be given the right by legislation to propose questions that the government of British Columbia must submit to voters by referendum?" Those were the two questions.

It was speculated at the time that these two questions on recall and referendum — recall and initiative, as they were known here in British Columbia — were chosen as a kind of flirtation with direct democracy that might

forestall any possible interference by the provincial Reform Party in the election campaign of 1991. There were also suggestions that the two referendum questions might somehow defuse the public's concern over integrity and accountability in the wake of political scandals that had plagued the Social Credit administration of the day.

In any event, the Social Credit administration was not returned to office in that election, but the two referendum questions were overwhelmingly endorsed by more than 80% of British Columbia voters. The incoming NDP administration in 1991 was anything but enthused about implementing these tools of direct democracy, but at the same time, the government could not ignore the clearly expressed wishes of the British Columbia electorate. It took a full year after the election before a legislative committee was assigned the task of reviewing the means of implementing the desire of voters. I served on this committee and I dubbed it the committee of delay. It took us another two years to complete our work and get the legislation through the British Columbia House.

I'd like to leave the process aside and the politics aside, if I could, and you can probably take it that I'm critical of the resulting end product. I'd like to tell you about it because it's referred to in your discussion paper, but I really think you need some context here before you can assume that in British Columbia we have any kind of workable referendum legislation.

In short, the legislation which was passed in British Columbia, which is known as the Recall and Initiative Act, and I'm sure your researchers can get copies of that or a summary of it for you, is purposefully designed to prevent the recall of any elected representative and to frustrate the desire of citizens who wish to have a question submitted to voters by means of a referendum.

1350

Let me deal very briefly with recall, because it received the lion's share of attention in British Columbia, and I think the reason for that is because it focuses on the personality of a politician and the news media find it much easier to deal with that issue as well. Under the British Columbia legislation, in order to unelect or recall a politician sponsors of a petition would have 60 days to collect the signatures of more than 50% of eligible voters in a constituency from the previous election, not merely of votes cast but 50% of all eligible voters. This must be done by volunteers only. Not surprisingly, even in the sometimes heated world of British Columbia politics, no one has even yet considered a recall petition. In jurisdictions where the approval levels range between 10% and 20% of votes cast, recall petitions have proven to be very difficult and very rare. Under the constraints of the British Columbia law, it is virtually impossible.

Of these two tools of direct democracy, citizen-based initiatives are by far the more important, more significant in terms of their impact on our parliamentary system and much less understood as well. Under British Columbia's legislation, in order to get an initiative put to voters in the form of a referendum, a number of hoops would need to be squeezed through. Most significantly, sponsors of an initiative would have 90 days to sign up at least 10% of eligible voters in each of British Columbia's 75 provincial constituencies.

If such an extraordinary petition could be properly executed under the strictures established by law, then the initiative could be put to a province-wide referendum where it would need a double majority for approval. First, it would need more than 50% of all eligible voters, not merely votes cast, and the referendum would then also need the clear approval of 50 of the province's 75 constituencies. There's a double majority showing a regional protection as well. A majority of the regions of British Columbia would have to support that referendum in order to have it submitted to the Legislature. Then and only then, the government of the day would be required to introduce the initiative in the Legislature as a bill for first reading. There is no requirement to pass it into law.

In a nutshell, that's the initiative procedure under the British Columbia legislation. What has the experience been to date in BC? Many have spoken bravely of trying to use the legislation, but to date only four applications have been made under the act. To give you a bit of a flavour, let me very briefly explain the four applications that have come forward so far.

The first one was a proposed initiative to legislate a balanced budget and retirement of the provincial debt. The chief electoral officer of the province of British Columbia issued a petition, but the applicant could not find sufficient canvassers to pursue the matter within the prescribed time limit. The second was a proposed initiative to eliminate MLAs' pensions. It was withdrawn when the provincial government passed legislation that achieved the same effect. The third attempt was an initiative application to separate school taxes from property assessments in the province of British Columbia. Again, the proponent of this initiative was unable to organize canvassers around the province. The fourth and most recent, and you would have seen reference to this last night on the CBC national news, is an attempt to ban the hunting of bears in British Columbia. This initiative is currently being organized by a number of environmental groups in BC which already have more than 200 canvassers registered with the office of the chief electoral officer. Still, it seems very unlikely that they will achieve more than raising the profile of their cause.

The government of Ontario's consultation paper correctly notes, on page 29, "The level of signature threshold...is critical to the functioning of the referendum process." The British Columbia experience shows clearly that the threshold is much too high, and this serves only to frustrate the genuine desire of citizens who want to play a more direct role in the functioning of their democracy. Let me be clear: I don't believe it should be easy to recall an elected representative or to have a citizen-based initiative passed into law. It should be difficult. There must be safeguards built into the process to prevent abuse either by political opponents or by special interest groups, but if we place the approval levels at unrealistically high levels, so that any effort at direct democracy can only fail, we not only lose the safety valve for democratic discontent that people have clearly said they want, but we also risk further alienation of a general public that is increasingly disengaged from politics and politicians. We thereby feed the cynicism that is so maliciously directed towards all those who today participate in public life.

In British Columbia we had the opportunity, a golden opportunity, to develop a model of direct democracy within our parliamentary system of government. We failed, and failed badly, in my opinion. Rather than having toyed with people's expectations and hopes, our provincial government should have simply been candid, should have been honest and admitted that it didn't believe in direct democracy, and there would have been nothing wrong with that, in my opinion. But they didn't do that. Instead, politics have suffered. Politics in our province are now more poisoned than when the proposals first came forward five or six years ago.

Ontario today has before it the opportunity to implement a small but significant parliamentary reform. Do not repeat the mistake of British Columbia. Learn from the experience of the westernmost member of your Canadian family. Don't make promises that you can't keep, and keep the promises you've made by making an important element of direct democracy a part of decision-making in your province. I know from experience that it's easier said than done, but good luck, and thank you for your time.

Mr Silipo: Thank you very much, Mr Mitchell. I wonder if you could tell us, in your view, just dealing first of all with the question of citizen-initiated referenda, where you would set the parameters in terms of minimums. You talked about the BC experience, both on that and on recall, and told us clearly what you didn't like in terms of numbers. But could you give us some sense from your experience about where you would have set some of those numbers instead, both on the recall and on the broader issue of citizen-initiated referenda?

Mr Mitchell: First of all, I should tell you that I had concerns initially, when recall and initiative were put in the form of referendum questions to the electorate. I personally expressed some grave concerns about whether we should implement these without having broader discussion, debate and education. Having said that, when more than 80% of British Columbians said they wanted them, I believed our task as legislators was to implement both of these reforms in a workable fashion.

Our committee, which was doing some work very similar, I believe, to what your committee is now doing, took a comparative look at other jurisdictions that have implemented both of these reforms. The thresholds for approval were much, much lower in virtually every other jurisdiction that we examined, whether it was Switzerland, various American states or New Zealand, as Mr White has discussed. A key variable that could be changed to make this legislation workable would be to allow for a longer time period for the proponent of an initiative to campaign and to get whatever the level of signatures threshold is.

1400

In British Columbia, for initiatives we require 10% of all eligible voters in every one of our provincial constituencies. There can be no paid volunteers or canvassers. This all has to be done on a volunteer basis, which I think is correct. We don't want special-interest groups coming in and funding this on a per-signature basis, which is done in California, which I think is atrocious. Having said that, within a 90-day time frame it's virtually

impossible. It cannot be done over a vast expansive geography to sign up that number. Perhaps lowering the threshold to 5% and extending the time frame from 90 to 120 days might make the target a little more achievable. When it comes to recall, and again this is very controversial, we are asking for the signatures within 60 days of 50% of all eligible voters in the previous election. It's virtually impossible. You cannot do it. You'd need an army of canvassers going door to door, in shopping malls, on street corners, to be able to sign up that number.

I don't think it should be easy to recall an elected representative — heaven forbid — but if you put a procedure in place, it should have the possibility of achieving the goal. In American states that have used recall provisions — not that I'm using the American model as something we should aspire to necessarily, but I think we can learn from their experience — in American states that have set recall thresholds at 10% to 20% of signatures, which would cause a by-election, over a 50-year period we've only had one or two petitions that have ever gone to a by-election, and in at least some of those cases the incumbent is re-elected in the by-election that occurs. We need safeguards from abuse, but we also need realistic mechanisms that can work rather than frustrate the desire of people to participate in these processes. I hope I've answered your question.

Mr Hastings: Mr Mitchell, thank you for an illuminating presentation. You allude to the fact that you think the California model for gathering petitions is atrocious because it's a profitable enterprise or industry. Without getting into the merits or demerits of that, rather than the traditional process of gathering signatures the way we have in western democracies now, has your committee or you yourself ever thought of using the new computer technology as a signature-gathering device to get the appropriate threshold levels for a citizen-driven initiative to be put on the ballot for a vote? That is, if you can have a PIN for a teledemocracy, as Mr White alluded to, in direct elections of candidates to a position, why is it impossible to find a methodology for the gathering of signatures if you don't have sufficient volunteers to carry out the task, even with your lower thresholds in British Columbia, given your distance etc? Do you see a PIN as a way of being a verification of an actual signature, if that could be worked out technologically? Also, if you had a permanent voters' list situation?

Mr Mitchell: Thank you for your question; a very good question. Our committee did consider this. I can tell you why it was not included in the British Columbia legislation; it's because the government members on the committee quite frankly thought it would be too easy. They thought it would be too effective and they wanted to make the process as difficult and cumbersome as possible. Therefore, they stuck with the old manual signature collection system. Having said that, I'm personally very attracted to the presentation Mr White has made. I'm looking forward to examining his private member's bill, which is about to be introduced in the House of Commons, because I think the electronic methods that are available to us via technology could

easily be used in the petition process that might lead towards a referendum. There's no reason it couldn't be.

When we looked at some of the American examples, I can tell you that in the United States these technologies have not so far been used broadly at that stage of a citizen-based referendum. The reason I refer to the California system as atrocious — I don't want to mislead you — is that I've been in the United States during elections and I've seen the ballots. When voters go into the voting booth in an American election, they are confronted with a ballot that is as thick as a telephone directory. The first ballot will ask them — this fall, for instance — to vote for president; the next one will be for their senator; the next one will be for their member of the House of Representatives; and then it will go in declining order into state governor, state representatives, state senators. When you get down dozens and dozens of pages into the ballot, then you'll start going through the various initiatives, and they could number anywhere from two or three to dozens and dozens. Most voters don't ever get through the ballot, through the telephone-book-size ballot. They vote for the first few and they never get to the others. It's ridiculous. I hope we never get to that point in Canada.

Having said that, the opportunity for a referendum to be put to voters, either at the time of a general election or at other intervals, I think is an exciting prospect that might bring citizens back into the democratic process, and that's something we need badly.

The Chair: Are there any other questions from government members? The Liberals are next.

Mr Morin: I'll possibly give you a chance to recap today what you've said. You were there when the legislation was created. If you were given the occasion today to bring amendments to that legislation, what amendments would you bring in?

Mr Mitchell: First of all, in the most recent British Columbia provincial election, which occurred just a few months ago, I did not seek re-election but I was a very keen observer of the election and I did media commentary. I can tell you that the opposition parties in British Columbia tried to make the recall and initiative issue a point of discussion during the campaign. It did not receive the attention that some thought it might have, because it became diffused with a whole variety of other issues, and leadership, of course, dominates most election campaigns, certainly in British Columbia. But it was proposed by both the Liberal opposition here in British Columbia and by the Reform Party opposition and by other opposition members that we should amend the existing legislation to make it workable. There were a number of proposals made.

My own personal view is that in order to make the BC legislation workable and not a joke — and it's a bad joke as it is, because it's a law that cannot work and it's designed not to work. But in order to allow it to work, we need to do two main things: lower the threshold for approval for both recall and initiative to allow there to be a realistic chance that under some extreme circumstances these reforms, these tools of direct democracy, can work; otherwise it doesn't make any sense to have a law prescribing them. Secondly, we need to lengthen the

period of times allowed for conventional technology to gather the signatures required. If we don't look at those two basic and simple reforms, these laws cannot work. Now, that doesn't go to the point made earlier of looking at electronic means for gathering signatures. Those are other amendments that I think are well worth considering.

But the existing law could be amended very simply by looking at lengthening the period of time required to gain support for an initiative and by reducing the signature threshold for approval. Those are issues that are addressed in your government's discussion paper. I think they need to be looked at very carefully if Ontario is going to have a workable referendum law.

Mr Wildman: I enjoyed your commentary during BC election night. I watched it from here in Ontario.

Frankly I am interested in the idea of recall, and I agree with you that there needs to be a workable threshold. But it would seem to me that you would have to have some limit on the number of petitions during a member's term.

Mr Mitchell: Yes.

Mr Wildman: I know of one state representative in the Midwest who spent almost all of his term fighting petitions instead of doing anything else. He was successful in every case, I understand, but that was what he spent nearly all of his time doing. That wouldn't be very profitable for him or for his constituents, I would think.

My one question, though, is in regard to my discussion with Mr White about his observation that in Switzerland somewhere between 15% and 18% of the electorate actually participates in referenda, and they tend to have them every week, almost, in Switzerland. We're talking about a very small country with a small population. I am concerned about that low turnout, because one of the arguments for direct democracy is that we have low turnouts in general elections because of the cynicism of voters about having real say. This gives them real say, so they should be enthusiastically involved. If there is only 18% of the people voting in referenda in Switzerland, then we've got the same problem. What's your view on that?

Mr Mitchell: You've raised a very important question which has caused me some deep concern as well. I referred to the Californian example, which I would add to the situation in Switzerland, where the ballot itself is so complex and so intimidating that I think it alone has become a factor in voter turnout in the United States, which is much, much lower than in our own country, of course. We have this ironic situation where if direct democracy is implemented incorrectly, it can actually serve to defeat the purpose of bringing the electorate into the process, which is something you want to think about carefully, because you want it ideally to have the opposite effect.

First of all, when it comes to recall, to go back to your initial point, the British Columbia legislation provides for only one recall petition per term for any elected representative. No sitting provincial representative can face more than one recall petition per term of office. Of course, if the required signatures are obtained, the incumbent member can run. If he or she is re-elected, he or she will not face another recall petition during the life of that Parliament.

Having said that, the number of signatures required to recall an MLA is a controversial area. In British Columbia, we simply said it's 50% plus one of eligible voters in the previous election. Now, that raises a few logistical problems. You have to use the previous voters' list. If you have a constantly updated voters' list, that's hard to determine. Secondly, 50% of eligible voters is an extraordinary number. Other models have been proposed. For instance, in a period of multiparty politics, it's very rare for most elected representatives to receive more than 50% of the vote. It doesn't happen often where you have several parties running. Should it be appropriate that to recall an MLA it would be sufficient to have the number of voters sign on to a petition who elected that member — let's say 35%? Would that be sufficient to sign up a petition? Even then it's a very difficult process to imagine that number of individual citizens in one constituency signing a petition, especially within 60 days.

So in British Columbia, really the process cannot and will not work. I think it's dangerous, because we're toying with people, saying that we have a process, dangling it front of them, and yet the process cannot work. It's designed to fail. I think that actually cheats the public and encourages cynicism.

In terms of voter turnout, a referendum law such as one that you may be considering in Ontario should actually serve, I think, to increase voters' involvement, to increase the involvement of ordinary citizens in the political process, something that might reverse the trend we're seeing in Canadian politics today. That's the hope and that's the challenge for your committee.

The Chair: Thank you once again, Mr Mitchell, for your advice. We really do appreciate the sincere effort you put forward today.

I'm now going to recess the committee until 2:30. We'll resume again in room 151.

The committee recessed from 1413 to 1431.

DIRECT DEMOCRACY GROUP

The Chair: We will now resume our hearings. Our next group today is the Direct Democracy Group, Mr Ernst Kneisel and William Wills. Gentlemen, we've got half an hour set aside for your presentation. We look forward to hearing what you have to say. If you'd like to introduce yourselves for the purposes of Hansard, we can start.

Mr William S. Wills: Mr Chairman and members of the committee, my name is William S. Wills, and my colleague is Ernst Kneisel. While we'd like to just talk about this thing at this point, we feel our time is very limited and therefore we're just going to read our presentation to you.

The members in our group welcome the government's commitment to expand direct democracy in Ontario, as outlined in the consultation paper. Referendums are certainly one way to bring about legislative action based on the will of the people. In this connection, however, we have some suggestions.

First, a little background about our Direct Democracy Group. We have 15 active participants, both men and women, who reside in the Quinte region. Most have

careers in the community representing a variety of fields, for example, the telecommunications industry, local network providers, a telephone long-distance company, an industrial development company, a former news writer, a film and video company, a member of the local arts council, a graphic communications specialist, a consulting economist, a veterinarian, a business school teacher, a computer systems analyst and an environmental specialist.

The concept of democracy is summed up in the roots of the Greek word "themocratia" — I got that pronunciation from a good Greek friend of mine — or, loosely speaking, "people power." If Canadians seek real people power, we believe there are two fundamental requirements to make it effective: Citizens must be better informed on public issues, and they must have the means to effectively communicate this fact to governments.

Citizen discussion and debate on any proposed provincial referendum question, however, we believe can only be realistically done at the community level. The community is the place where we all live, where all government policies are experienced and where we, as citizens, must act if we are going to do anything about the burdens governments thrust upon us, sometimes without our permission.

How then can we start to change the system in our communities throughout the province? We have suggested the name "community forum" for a kind of citizens' forum where any issue with sufficient public interest could be presented. It would also be a place where public issues could be discussed and debated. Qualified speakers could educate, and members of Parliament could express their views, answer questions and be challenged on their positions. For this kind of forum, we propose the latest communication technology, including radio, telephone, television and online computer networks to provide maximum opportunity for public participation.

The two provincial ridings in the Quinte region had 98,674 electors in the 1995 provincial elections. We see the community forum being activated by a petition of, say, 3%, or 29,060 names.

An electronic petition, for example, could be achieved by use of private and public computer terminals. The petitioners would have to provide some assurance of funding to meet the costs of the forum, which would involve a public auditorium, advertising costs and acceptable speakers on the particular issue chosen. Arrangement would also have to be made for live TV, radio and telephone communications to the auditorium for call-in questions. There would be opportunities for questions from the floor or by telephone as forum proceedings would be broadcast live to the entire community audience.

I'll just ask Mr Kneisel, my colleague, to carry on.

Mr Ernst Kneisel: A constraint on any live meeting, whether it's televised or not, is the limited amount of time available for actual discussion and debate. Ideas and solutions are often not heard due to the reticence of many people to come forward during a meeting. Current statistics suggest over 30,000 households in the Quinte region have computers. For those members of the community with access to a computer, online communication offers a solution to this problem of missing out on things.

Subsequent to a live community forum meeting, a time frame would be established, say a week, for continued discussion and debate. At this point the topic or issue discussed would have received substantial media coverage. Citizens with computers unable to attend the live meeting or to view it on TV would be able to obtain transcripts through their computer online service. During the allotted time frame for discussion, an area of the online service would be set aside for participants to use message-based conferencing for discussion and debate. Online participants could also contact live meeting speakers by electronic mail to submit questions. At the end of the allotted discussion period, the message-based conference area would be closed.

Finally, if required, the televote, or people's plebiscite, would be conducted by telephone. This would be a government decision in the way they set up the referendums. To accomplish this, a citizen would need a personal identification number, a PIN, to permit voting by touch-tone phone. PINs, similar to a bank client card number, would be issued to each qualified voter. An alternative to the televote therefore might be an Internet Web site, which the local network providers say is quite feasible even for secret votes and the avoidance of second votes.

All this would provide, first, a public forum for all voters and taxpayers in the region, and second, the technology to record the votes and maintain a database from electoral lists.

Unfortunately, we don't have the time here to give you our opinions on all the questions posed in your consultation paper. One of your major concerns, however, is cost, so why not provide an opportunity for citizens in their own ridings to become better informed and to express their views on issues in the form of a local plebiscite? If the same issue was debated in a number of ridings in the province and the plebiscite results reached the required referendum threshold, the government would have to hold a referendum on that issue — that is, if they so rule. I realize that's still up in the air. The ridings would be a testing ground and qualification area for a referendum. Like Mr Patrick Boyer, we believe in the intelligence of the average citizen, particularly the ones who take the time and trouble to become better informed and to vote.

The cost of a referendum can be kept low if citizens are required to make a real effort to achieve a referendum. Citizens can be better informed if they can discuss possible referendum questions within their own communities. We believe this can be accomplished by the foregoing description of community forums and by requiring all costs for such forums to be borne by a locally approved citizen organization and all participating citizens.

Respectfully submitted, Bill Wills and Ernst Kneisel.

1440

The Chair: Thank you very much for your presentation. We're going to have questions now, and I will turn to the government caucus to lead off.

Mr Hastings: Mr Kneisel, you talk about plebiscites being used in certain ridings as a testing ground before any government would conduct a referendum.

Mr Kneisel: That was the whole idea. It was a preparatory thing. The idea was, effectively, to kick the

question around and see how much interest there is, and then you would get actual private votes by telephone. So frequently these referendums, as we know from California and other places, once they get loose, there are all kinds of fatheads out there ready to start a referendum on something that they have a narrow interest in. We want to overcome that.

Mr Hastings: Other deputants have suggested the use of certain threshold majorities, percentages etc, and test times.

Mr Kneisel: If that involves getting written signatures, I don't think it's nearly as effective as getting telephone-in votes via a PIN.

Mr Hastings: Okay. What sort of criteria would you use to ascertain what ridings would be used as a testing ground for these questions, whatever they are? Would you also foresee, then, that some of these issues would have a regionalized orientation only? This question has come up from the members of the committee with respect to whether there ought to be some issues dealt with on a more regional or local basis rather than looking at each referendum issue as being provincial, a province-wide basis only.

Mr Kneisel: Bill was whispering an answer to me. I think he wants to speak to it.

Mr Wills: We have visualized this as a private citizens' organization with government approval for every riding or community riding, if you want to call it that, because I think every riding needs a forum where people can express their views on various subjects and issues and can even express their views in the form of a vote, whether it be by a televote using this teledemocracy system of MT&T or whether it be through the computer terminals, which some of our computer experts down there and online companies, network providers, tell us can be done. There may be some things that you wouldn't have a vote on, but there would certainly be some that you would want a vote on. But we see this as taking place on an ongoing basis in the communities all the time, for many reasons.

Mr Kneisel: It would be like setting up 50 Rotary Clubs or something of the sort, one in each community. It would be this whole direct democracy procedure.

Mr Hastings: This committee just had an experience with teleconferencing. We just heard from Mr Mitchell from British Columbia and Ted White, the Reform MP, who has a bill before the House. He mentioned in his presentation, or in answers to some questions, that the city of Belleville has just had a televote on some issue. He wasn't clear as to what the issue was. He did say, though, that the mayor was very proud to stand up within minutes after the conclusion of the vote and announce that a certain number of people voted a certain way. Can you fill us in as to what this project was, or is that a myth that has evolved?

Mr Kneisel: I was with the mayor last night and he certainly didn't mention it to me, and I hadn't read anything in the newspaper on that.

Mr Hastings: Okay. It could have been earlier this year. I haven't seen anything in the papers about it.

Mr Wills: It's a new one on us, and we've been in touch with the mayor on this idea.

Mr Hastings: But Mr White of White Rock, Surrey and whatever else is in the name of his riding did specifically mention that the city of Belleville, he thought, had carried out some type of televote on an issue.

Mr Kneisel: I wish we had.

Mr Hastings: Thank you very much for clarifying that.

Mr Wildman: Obviously it's a little grey.

Mr Clement: Just on the Web site idea, I visited some of the electronic town halls that have been set up on the Web sites. It's instantaneous and entertaining, but at the same time it's almost like instant opinion. I think we want to get considered opinion as much as we can. People can make instant decisions — they do it all the time — but I think we want to at least provide the framework so that people who want to seriously review an issue have an opportunity to do so. How would you use the Internet and computers to at least allow for the possibility for people to seriously discuss and seriously research an issue before they cast a vote?

Mr Wills: We maybe didn't explain it too much in here, but we have attached a document called the Community Forum Proposal, which you will receive. It goes into some detail there. The whole idea is that if you have a community forum and you have sufficient petition to call one, and this would be a private citizens' group that would be non-partisan that would organize these things, when you decide to go ahead with a community forum and you've got everyone supporting it, they're prepared to reserve so many seats in the auditorium and are prepared to do a certain amount of advertising and we have the speakers lined up, that kind of thing, then you have a meeting with the speakers and the issue is discussed and debated: questions from the floor, questions phoned in; hopefully we can get it on live TV. We've had some good responses from some of the cable companies in the general area there. So we'd have it on live TV. As I mentioned, it could also be on the radio as well, live radio. These are things we all hope to have.

After that, the vote would not be taken for a week or 10 days if this was something that called for a vote, and during that period there would be an online conference set up, available to anyone either through public terminals, computer terminals, or through their own computer at home, and modems. As Ernst mentioned, there are supposed to be about 30,000 in the Quinte region. They don't all have modems, but gradually it's getting greater all the time, as you know. These people could call in by e-mail, and this would be an open line, so the calls that go in would be seen by everyone on this particular conference, and they would go in to the speakers that had spoken at the auditorium. The question would be seen by everyone involved in this. The answers that come back from the various speakers would be seen by everyone involved, and this would go on for a week.

The Chair: Thank you very much. It's now the turn of the Liberal caucus to ask a question.

Mr Bartolucci: Thank you, gentlemen, for your presentation. We've heard for the last day and a half so many varying opinions about what should constitute an item for a referendum. You quoted Mr Boyer earlier, Mr Wills. Mr Boyer says that it should be anything tran-

scending provincial importance; the issue should be extremely serious. Are you suggesting in your presentation that the item or topic for a referendum be any topic at all?

Mr Wills: No. There's a lot to this. It's hard to put across in just a few words. We're not really talking about any official referendum at that level, at the community level, though it could be if the issue has been discussed and debated over, say, several months; maybe they've had more than one meeting on this particular issue. Of course, it will only come up if there are sufficient petitioners to get it and the money is available to get it. If at some point — say it is a local area situation — a referendum should be held, the government can then go ahead and execute that referendum in that area; they've seen the evidence that there's a need for it.

If it's something beyond that involving the whole province, say, then that same issue could be passed from one community riding to another and could be debated in all these different ridings, and when they reach that threshold, whatever it might be that the government requires in names, these petitions that come in on that same issue, then the government will say, "Well, look, we've got enough right there." You'd have to work out a system of doing it. We haven't gone into all those details.

The other side of it is that in the communities, people want to talk about a lot of things but they feel apathetic because there's no way of doing it, and they say, "Well, nothing ever comes of it anyway." We want to try to provide that vehicle.

Mr Kneisel: I have a partial answer to that, though, in that little paper of mine. I say: "The basic criterion for determining the value of the electorate's opinions must be their competence to judge individual issues. Thus issues such as fiscal and monetary policy, energy policy, trade policy, external relations, defence, and a broad range of other matters may be judged beyond its competence. However many social and moral matters clearly fall within it.

"Under this latter heading one might include such issues as capital punishment, young offenders' immunity from the law, abortion, immigration policy (the question of 'who' rather than 'how many'), official language status of French and anglophone areas, basic civil rights" and so on, multicultural expenditures.

I think there are areas of real incompetence on the part of the public that they are not qualified to consider. I'm sorry if I interrupted you.

1450

Mr Bartolucci: Not at all. In fact, you provided some more clarification. Thank you. If we could just deal solely with the provincial issue at this point in time, do you consider some issues to be a mandatory requirement for a referendum? Are there some issues that should automatically be held as a referendum?

Mr Kneisel: I don't feel that way. I think people should want it. They should be aware of the need for it rather than say, "Think about this," throw it on their plates and say, "Come on, respond to this." I don't think you'd get much action; it's simply not feasible.

Mr Bartolucci: You mentioned the threshold of 3%. Were you talking of 3% at a municipal level as opposed

to a provincial level or would you use 3% at a provincial level as well?

Mr Wills: I was looking at it not just from the standpoint of a provincial referendum but from the local area. We've got about 98,000, as I mentioned, in the last provincial election. I thought if we had this non-partisan organization set up, how many names would we want on a list to justify going ahead? Of course they've got to provide certain things as well, funding and that sort of thing, so it struck us around 3% but that's flexible; it's a suggested figure. Out in BC isn't it 5%? I think down in California it's 5% and in Saskatchewan it's 10% — referendums.

Mr Bartolucci: It varies depending on the country, certainly. Should there be a limit to the amount of money that both sides of an argument can spend in promoting their side?

Mr Kneisel: That's a very tough one. It's hard enough to control what goes into political coffers, much less this fringe kind of policymaking that we're talking about here. I think it would be very easy for any determined interest groups to hide a great deal of what they might put into such a thing. One could pass a law and say, "You mustn't do it or you must declare what you've put in," and then prosecute people and see if you could finally get them all to be honest.

Mr Wildman: Thank you for your presentation. I'm a little concerned about a couple of things you said. I'll preface it by saying that I believe on fundamental questions, such as the fundamental law of our country, the Constitution, we should have referenda. But in terms of what you just said about interest groups becoming involved and spending a lot of money, one justification for so-called direct democracy is to get away from special-interest groups. We've also heard that in California now, where they allow the purchase of signatures, there are firms that actually specialize in getting enough signatures. It seems to me that special-interest groups, so called, will adapt to whatever situations and deal with them in whichever way they can.

We heard in testimony from British Columbia, from the MP who has legislation pending before the House of Commons, that between 15% and 18% of the population of Switzerland participates in referenda, which certainly calls into question the whole argument that we have low voter turnouts in general election campaigns because of public cynicism and that the way to get people involved is to have referenda. There are even smaller numbers participating in the country that has more referenda than anywhere, other than perhaps California.

Having said all that, I'm very worried about the list you gave out as your proposed list. If we believe in democracy, surely the essence of parliamentary democracy is rule by amateurs, and most governments prove that.

We call on the experts to get expert views and opinions and ideas and policy and implementation, but ordinary people are elected by ordinary people to make decisions for all of us. That's the basis of our system. Then they put themselves before the electorate again to be judged on the basis of what they have or have not done.

If you say there are certain areas of policy that the public is ignorant about and therefore should not be subject to this kind of direct democracy, then I think you don't just call that into question, you call into question the whole idea of parliamentary democracy, because in an election campaign people supposedly make decisions not just on leadership and personalities but also on policy questions related to energy, for instance, defence, all sorts of things.

Mr Kneisel: They have access to all the experts, of course.

Mr Wildman: No. I'm talking about the ordinary populace, when you cast your ballot. It seems to me that you used as one example an area that might be subject to a forum or a referendum: immigration, for instance, and I'm not sure if you said "not how many, but who." I find that very alarming. Surely particularly in North America, where we're all immigrants except for the aboriginal people, our whole society is strengthened by immigration, and to then make who should be allowed in subject to a matter of public debate, I find that quite alarming and I'd like you to clarify it.

Mr Kneisel: I guess what Bill wants to say is that that is my personal opinion. I wrote an article on it.

Mr Wildman: I'm not attacking you.

Mr Wills: This is our presentation. It really has nothing to do with that, sir. You asked us our opinion; it's a personal opinion.

Mr Kneisel: I feel that way, personally.

Mr Wills: I have a different opinion than my colleague on that, but this is our presentation here.

Mr Wildman: It seems to me that we must have confidence in the electorate, whether we're doing it by referendum or by normal general elections.

Mr Wills: I agree.

Mr Wildman: There is one political scientist who said in a democracy the majority has the right to be wrong.

Mr Kneisel: I agree on that too.

Mr Wildman: The problem with most authoritarian states in the world is that you have a minority that thinks it's right and doesn't believe the majority has the right to have a different opinion. If the majority could be "wrong," are there matters that should not be open to public debate and along the lines that you outlined?

Mr Kneisel: I mentioned the one, for example, where a government is in deep debt, its bonds are in serious danger of not being accepted by the investing world, and a referendum is worked up against any program cuts. That would be a case of the tyranny of the majority and it would be really bad if that passed and a government were not able to make itself solvent again.

Mr Wildman: I see. I live near Michigan, and they have a referendum law in Michigan. Last year in Sault Ste Marie, Michigan, which is the neighbouring city to the area where I live, they had to close the schools in May because they ran out of money. The reason they ran out of money was that they had a referendum on whether to raise the taxes required to keep the schools open to the normal closure date at the end of June, and surprisingly the taxpayers voted against a tax increase, so they closed the schools. Do you think this sort of thing might happen in Ontario if we had referenda on tax increases? How

would we resolve this in order to ensure that our children get the kind of education that all of us desire them to have?

Mr Kneisel: That's why I like to exclude the taxation process from referenda.

Mr Wildman: Oh, because the Premier of this province has specifically said that matter should be subject to a referendum.

Mr Kneisel: I think he's on dangerous ground, that's all. It could backfire on him.

1500

The Chair: That you very much for your presentation. We appreciate your advice and your input.

Mr Kneisel: It's been a pleasure.

The Chair: There are two things I'd like to bring to committee members' attention. Placed in front of you are a document called Canadian Referendum Compendium, September 1995, that has been prepared by Warren Bailie, chief election officer; and a briefing note on the constitutional amendment concerning denominational schools in Newfoundland, and the constitutional framework of Ontario education. Those have been prepared for all committee members by the Premier's office.

One other thing I'd like to inform committee members at this time to add to their personal schedules: We're going to try and start, on Thursday morning, at 9:30. We have another witness who has, since we last prepared this, indicated an interest. It's the mayor of Sault Ste Marie.

DARIN BARNEY

The Chair: We have next Darin Barney of the University of Toronto. Welcome to the committee. You have half an hour to present your brief to us.

Mr Darin Barney: I'm a doctoral candidate in political science at the University of Toronto. I specialize in democratic theory and technology, which has led me to have a look at the democratic aspects of referenda and initiatives, especially to the extent that they've been mediated by technology much in the way that the gentleman who preceded suggested.

I see that member of Parliament Ted White spoke to you this morning. I have published a few studies on the electronic town hall and referenda that the Reform Party undertook in 1994 and 1995. It doesn't surprise me that Mr White was a bit foggy on whether or not there was a real process happening in Belleville. His enthusiasm for direct democracy, in my experience, often leads him to make claims about it that are not always able to be substantiated.

Mr Wildman: There is a lot of fog in Vancouver.

Mr Barney: That's true, yes. Actually, I come from Vancouver, so you're right.

Jean-Jacques Rousseau said: "Were there a people of gods, their government would be democratic. So perfect a government is not" suitable "for men." That's a curious observation, especially given that it comes from one of the most eloquent advocates of democracy the world has ever known, but I think we should read in a statement like that not a low estimate of the capacity of people to govern themselves, but an indication of the high esteem

in which this great thinker held this, the greatest of all ideas. It's not that Rousseau thought people were incapable; it's that he understood that democracy was a very complex proposition.

I raise the spectre of Rousseau because, as a student of both democratic theory and the practice of direct democracy in North America, I believe he provides an interesting contrast to those who believe that democracy is nothing more than the sum of free market and the periodic opportunity to vote. It's possible that in advocating the increased use of referenda and initiatives in Ontario, the current government is expressing its faith in the capacity of individual people to govern themselves, but I think it is also possible that their commitment to these devices might indicate an extremely low regard for the integrity of genuinely democratic politics, and perhaps even a fear of those politics.

The tradition of democratic theory is full of arguments about definitions, and I'm not going to get into them here, but for today I'd like to propose as a definition of "democracy" the following: A political arrangement can be called democratic if it provides for the equal ability of all citizens to participate meaningfully in the decisions that most closely affect their lives as individuals in a community.

My experience in researching the use of the instruments of direct democracy suggests that they can be used in three different ways relative to this definition: They can be used in ways that are undemocratic, they can be used in ways that are anti-democratic, and they can be used in ways that are simply democratic. What I would like to do today is to briefly outline the attributes of these three approaches to direct democracy so that they might inform your consideration of the direction it might take in Ontario.

If you look at the last three pages of my submission, you will see three checklists that I've provided which I think might be useful in terms of evaluating the eventual design and implementation of direct democracy in Ontario. If I have time after doing this, I might briefly indicate some aspects of the government's preliminary paper, or I might highlight some aspects that suggest to me what direction the present proposal might take.

To begin with undemocratic direct democracy, I guess we would say that an exercise in direct democracy can be considered undemocratic if it fails to satisfy the conditions of that definition that I have proposed, that is, if it fails to provide for the equal ability of all citizens to participate meaningfully in the decisions which most closely affect their lives as individuals in a community.

The first condition, you will notice, is the equal ability to participate, not simply the equal opportunity to do so, and this difference is an important one. Equal opportunity simply means that there are to be no formal or legal barriers to participation, no laws saying that this or that person can't participate because of the colour of their skin or their gender, for example. But the absence of those kinds of barriers is a necessary but not sufficient condition for the equal ability to participate. People who are not barred by law may nevertheless be unable to participate equally for other reasons, and a decision-making process that fails to take these other factors into

account, or which doesn't attempt to ameliorate them is, by definition, undemocratic.

There are a couple of examples listed in my brief that might make that clearer, which suggests that despite legal equivalence as voters, people that have a differential facility with the issues under consideration cannot participate equally with one another and that therefore a system which does not make provision for rendering those people as close to equally facilitated with the issues at hand as possible is not democratic.

Secondly, often there can be an inequality of ability to participate on the basis of money. A system in which legally equal voters are rendered unequal participants in decision-making by virtue of different levels of access to financial resources is an undemocratic system. It's undemocratic because it translates a relative lack of financial means into an unequal ability to participate. Modern democracies have rejected this ever since they abolished property qualifications for voting, but as we've heard from Mr Wildman, it can be a problem in referenda and initiative. In California, a sophisticated industry has arisen around referenda and initiative that has reached a point where success in one of these endeavours is almost impossible without employing one of these services. One learned observer in the United States has said, "Money is, other things being equal, the single most important factor determining direct legislation outcomes."

What this means is that individuals or groups that lack substantial financial means are unable to participate as equals in the decision-making process, and a direct democracy program which fails to address this would be considered undemocratic.

The second condition of our definition or of the definition I propose suggests that not only must people enjoy an equal ability to participate, but that their participation must be meaningful.

There are a number of ways in which meaning can be brought to the political life of the everyday citizen, and the instruments of direct democracy should be considered democratic only if they contribute to this process. Meaning can generally be realized through impact. That is to say, participation is meaningful if it induces discernible results that can be connected to it. Impact can be then external or internal. External impact means that the effect on policy outcomes has to be clear and decisive.

Internal impact is realized through what we might call the edification or betterment of the citizen herself, as a result of having participated. If a citizen who has participated in a direct democracy exercise emerges from it with no better understanding of the issues involved, no greater appreciation of the perspectives of those whose views differed from hers, no heightened sense of attachment to her community, no heightened sense of responsibility to her community, and without her sense of citizenship having been enhanced as a result of the exercise, then that exercise has failed to meet the test of democracy I've set out.

1510

The third element of our definition of democracy requires that the equal ability to participate meaningfully has to be applied to decisions which most closely affect people's lives as individuals in communities. There are a

couple of things I'd like to emphasize in this regard. The first is that this requirement implies that only citizens themselves can determine what the issues affecting them most closely are. This means that in a direct democracy exercise that is democratic, citizens must be given priority at every stage: agenda setting, issue selection, option construction, timing and scheduling. Otherwise, that exercise should be considered undemocratic.

Secondly, I'd like to point out that the designation of citizens as individuals in communities means that, in order to qualify as democratic, decision-making has to attend to the priorities of the entire community affected by it and not simply to those of a majority or a minority of individuals within it. In practical terms, this means that the decision-making process should provide for a robust encounter between a plurality of viewpoints on any given issue in order that the interests of individuals might be moderated by those of their fellows. It means that a broader range of issues might properly be brought under the rubric of direct decision-making than is customarily the case.

A decision-making design which privileges private interests over those of the collective interest is undemocratic, because it fails to recognize those community interests which defy individual expression. For example, in a democratic system of direct legislation, issues which affect individuals as members of a community, such as the elimination of social services, would receive consideration at a level comparable to those issues which affect them as individuals privately, such as taxation. To suggest otherwise would simply be undemocratic.

I'd like to move on to anti-democratic direct democracy. An exercise in direct democracy should be considered anti-democratic if it actively subverts the conditions outlined in my definition of democracy; that is, not merely if it fails to meet those conditions in the ways I have outlined, but rather if, in design or outcome, it specifically undermines them. So an anti-democratic program is one which is designed to circumvent the equal ability of citizens to participate meaningfully in the decisions which most closely affect them as individuals in communities, and it does so by substituting an undemocratic form of participation for existing modes of democratic participation.

Public institutions like legislatures and their committees, city councils, school boards, political parties, trade unions, interest groups, are far from perfect as democratic entities. They do, however, provide far better sites for meaningful participation and for the moderation of individual by community interests than do referenda or initiatives that do not attain the standards of democracy outlined above. This is particularly true in the case of social movements, that appear to appreciate the value of inclusivity, accommodation, communication, education and deliberation to a far greater degree than many traditional political institutions.

A direct democracy program that's designed to do an end run around mediating institutions such as these by appealing directly to the people through an undemocratic process will serve more to close down the space of public, collective decision-making than it will to open

this space up. It's in instigating this kind of closure that direct democracy becomes specifically anti-democratic.

If an intent to replace existing public institutions of collective mediation with a poor facsimile of genuine participation is discernible in the design of such a program — that is, if it's simply an attempt to transform public, collective, political decision-making into an isolated, individual, private transaction — then it should be identified as anti-democratic.

So then, what does democratic direct democracy look like? Well, a program of direct democracy can be called democratic if it encourages and facilitates the equal ability of all citizens to participate meaningfully in the decisions which most closely affect them as individuals in communities.

The important thing to note here is that it's not enough for a program of direct democracy to simply avoid violating the conditions expressed in my definition. A system of direct democracy does not qualify as fully democratic simply because it's not undemocratic and not anti-democratic. To qualify as democratic, it must actively encourage and facilitate the ongoing satisfaction of the conditions I have specified.

For example, a democratic design for a program of direct democracy would ensure that people were equally able to participate in terms of both facility with the issues and financial means. This could be accomplished by making strong provision for ongoing educational activity, access to resources like expertise, and by requiring that all referenda be publicly financed, that initiative and referenda campaigns be subject to strict spending limits, that a fairness requirement be imposed on media coverage of these events, and that campaign spending be limited to registered umbrella organizations representing various positions on the issue.

A democratic design would also ensure that their participation was meaningful by connecting democratic decisions in a direct and evident way to policy outcomes. To this end, it would also configure the decision-making process in such a way that it enhanced individuals' awareness of their communities, elevated their sense of civic responsibility, and sensitized them to the breadth of viewpoints and issues facing them as members of a collective citizenry. It would be a process whereby private interests both informed and were moderated by the public interest.

Also, a truly democratic system of direct democracy would ensure that the issues placed before the community, as well as the manner of their presentation and dispensation, were determined by that community itself. It means that a broad range of issues would be open to the process of democratic consideration in which the private interests of individuals again would both inform and be moderated by the public interests of the communities of which they are members.

Finally, in order to be properly democratic, a program of direct democracy would have to be oriented towards an expansion, and not a contraction, of the public sphere of collective decision-making. It would replace existing institutions of political mediation only if it could surpass them in satisfying and nurturing the conditions of democracy. In short, a truly democratic practice of direct

democracy would combat closure of the public sphere by contributing to an endless opening of it.

To wrap up before we get to your questions, I'd just like to say that the question before us then is whether referenda and initiatives can be configured to accomplish this goal. My conclusion, after considerable study, is that they cannot, at least not by themselves. The only way in which these particular instruments can contribute to a genuine democratic political arrangement is if they are but one part of a long and continuing process of highly participatory public deliberation. The value of democracy, as I have outlined it here, comes less from its use as a decision-making instrument and more from the enriching effect it can have on the public life we share as citizens.

Referenda and initiatives on their own are little more than a means of registering fixed, private preferences. What is needed are democratic forums and structures which facilitate the ongoing deliberation of public priorities through dialogue between citizens. A democratic process is not one where an isolated individual simply asserts his previously established private interest against his fellows. Instead, it's a process through which an expression of the public interest is formed through the consideration of differing viewpoints between citizens. This is when direct democracy becomes democratic, when citizens get together as equals to participate meaningfully in the decisions which affect them. There's little to suggest that referenda and initiative, employed in isolation from institutionalized deliberative practices, have much to offer the pursuit of this goal. For the most part, they seem more apt to thwart it. To suggest otherwise, I submit, would be to accept an impoverished idea of what it is that constitutes democracy. I'd appreciate your questions.

The Chair: Thank you very much, Mr Barney. I'm going to turn to the Liberal caucus first for questions.

Mr Bartolucci: Thank you very much for a very interesting presentation, almost a lecture. It brought me back to my university years in Lloyd Wagner's political science class on referendums. You've read the paper, obviously, "Your Ontario, Your Choice." If you had to categorize where this paper is right now, what is it, undemocratic, anti-democratic or democratic, and why?

Mr Barney: It's probably no secret that I would categorize the paper that's before us today as anti-democratic, and I'll give you three reasons I think so. One is that one of the criteria for an anti-democratic direct democracy exercise is that it seeks to marginalize existing democratic institutions. It's clear that this proposal does that. Throughout the proposal there are references to attempts to get around the Legislature, get around political parties and, most specifically, get around undefined special interests.

1520

Now, the question of special interests is an interesting one. It's one that is always brought up in relation to direct democracy initiatives. We should remember that why special interests are identified as something to be gotten around is because it's in those institutions' social movements — remember when we hear "special interests" talked about in a document like this, we're talking about women's groups, multicultural groups, anti-poverty

organizations, gays and lesbians, students, public sector workers. It's in those arenas that a vibrant sense of the public is nurtured, and where you have a vibrant sense of what the public sphere is, you have demands being made on the state for protection and enhancement of that sphere. That's something that the current government is resolutely opposed to, so getting around special interests means getting around those demands that foist what are thought to be unreasonable burdens of taxation on the public in order to support a vibrant public spirit. By trying to do an end run around those institutions, this design is undemocratic.

Secondly, I would say that this design is anti-democratic because it reduces citizens to taxpayers. The word "taxpayers" appears in this report far more often than does the word "citizens" and it's clear that taxation is one of the key issues that this instrument is designed to be applied to. To the extent that the consideration of taxation reduction in isolation of a serious consideration of the social repercussions of that kind of retraction looks like what's going to happen here, it's anti-democratic because it's an attack on the public sphere once again.

The third reason is related to the first one. I've probably said enough in answer to your question. I would say it's anti-democratic.

Mr Wildman: I must say I found your presentation interesting and stimulating. I won't say, though, that it reminded me of lectures from Eugene Forsey that I participated in.

Mr Barney: That would be a compliment.

Mr Wildman: I didn't mean that as anything. Could I say, though, to play the devil's advocate, that there are those political thinkers who would argue that all governments *per se* are democratic in that they could not exist at least without the acquiescence of its citizenry. They may in fact be anti-democratic governments, but the fact that they are governments means that they at least have the acquiescence of the citizens.

Mr Barney: Right.

Mr Wildman: Having said that, it seems to me that what you're talking about is a mediation between individual rights and collective rights and needs in a community where you've said that in order for it to be democratic, not only would it have to deal with taxation issues, it would also have to deal on the other side with expenditure cuts and program cuts, since they are related, obviously. If you had a system set up that was not government-initiated but citizen-initiated, it is then your view that there must be expenditure limits and funding resources available to both sides to make it democratic.

Mr Barney: Yes. To the extent that I identify it as one of the chief criteria of a direct democracy program, being undemocratic is a differential degree of access to resources, be they financial or informational or expertise-oriented. In order for that kind of exercise to be democratic, there would have to be things like a checklist A: spending limits, fairness doctrine for coverage, some kind of public provision of access to resources and that kind of thing. I think that's crucial.

Mr Wildman: How do you deal with the view which is expressed in the discussion paper that somehow the mediating institutions, as you call them, or legislatures,

the debating fora that we have in our parliamentary democracy, have been subverted by special interests, that lobbyists have used influence to somehow stymie the wishes of the general public? That statement itself is a questioning of our very democracy, is it not?

Mr Barney: That's true. I know I only have a couple of minutes left, so I'll try to be brief. What I would say at the outset is that I completely agree with the diagnosis that democratic political institutions as they exist in this country are far from perfect as democratic institutions and have a long way to go.

Mr Wildman: Churchill said it's the worst kind of government, except for all the others.

Mr Barney: Certainly, yes. I would be the first to affirm that. What I am against is replacing those institutions, flawed as they may be, with a process that is even more flawed in terms of its democratic potential. That's what I am opposed to. I have an extremely high degree of faith in the wisdom of the people and in their ability to handle complex issues if they are given an opportunity to do so in the ways that I have sketched here as being democratic. I do not think that people's very real sense of alienation from democratic institutions in this country should be enlisted in a project that is fundamentally undemocratic, which I believe this one to be, at least from the current indication.

Mr Wildman: I'm out of time, but I really would like your comment on the fact that apparently in Switzerland only 15% to 18% of the people actually participate in referendums.

Mr Barney: It's true. Studies have shown that despite the availability of referenda and initiatives in Switzerland, there is as high or higher a degree of voter alienation and disengagement from the political system there as there is in the United States.

Mr Beaubien: Mr Barney, on page 6 of your presentation you mention at the bottom, "This is when direct democracy becomes democratic — when citizens get together as equals to participate meaningfully in the decisions which most closely affect their lives as individuals in communities." What's your feeling on the democratic system we have today?

Mr Barney: As I expressed to Mr Wildman, I think the democratic system we have today is seriously flawed and does not meet the definition of democracy that I proposed. However, what I also suggest is that a direct democracy project modelled on the lines suggested in the government's consultation paper would be worse than current democratic institutions, and that is unacceptable, and that's why I would recommend against it.

Mr Beaubien: Earlier on in your presentation, you mention about sometimes the majority making the wrong decision. Did you suggest that if they do make the wrong decision in a democratic process, you feel sometimes it's not democratic, from your point of view?

Mr Barney: No, I don't think I suggested that at all. You might be able to point out what you're referring to. But I would agree that in a democratic process sometimes the majority makes a mistake. I believe that's just a cost of democratic politics that we have to bear, and it's a cost that won't be odious if the system is sufficiently democratic to allow for the ongoing and continual scrutiny,

change, elaboration of those decisions. People learn from their mistakes. In a truly democratic system they learn and reorient themselves accordingly.

1530

Mr Clement: Do you believe that the government is under too much influence by media and political élites currently?

Mr Barney: Do I believe that the government is under too much influence by media and political élites currently?

Mr Clement: That's what I just said.

Mr Barney: I would not identify the media as a bogeyman in the way your government and other political parties in the country have identified the media. I would suggest that the government is under the influence of an élite, but it's also not the élite that you identify. It's not the special-interest groups that include people like environmentalists, gays, lesbians and students.

Mr Clement: We know it's not your élite —

Mr Barney: It's rather the major financial institutions that exist in this country and in others.

Mr Clement: Corporate élite.

Mr Barney: Yes.

Mr Clement: Given that understanding of how you think our government works, why wouldn't you want at least an opportunity for alternative élites or alternative groupings to have their possibility of driving the agenda rather than us?

Mr Barney: I would want that. I just don't think your proposal facilitates that.

The Chair: Thank you for your presentation. We appreciate it.

TAX EQUITY ALLIANCE

The Chair: The next group we have on our agenda is the Tax Equity Alliance. Welcome.

Mr William Clark: My name is William Clark and I'm the chair of the Tax Equity Alliance.

Ms Carol Burtin-Fripp: My name is Carol Burtin-Fripp. I'm the vice-chair of the same organization.

Mr Clark: On the document we have given you, the cover basically states who Tax Equity Alliance is. It's a recently formed group that's an umbrella organization largely formed from the executives of other ratepayer organizations. It is a one-issue PAC, I guess, if you want to call us that. I heard what went on before. We are dealing with the issue of taxation in the province; however, we feel that the matter of democracy and referenda play into that agenda and my remarks this afternoon will be structured to that end.

I've titled our presentation today Direct Democracy: An Athenian Dream for Ontario. Let me take you forward into the first decade of the 21st century. Let's assume direct democracy has come to Ontario and grown and matured for several years. It's 10 am on a Tuesday. We work a three-day week and start at 11 am. You're welcomed at your interactive work station by an on-screen message and a government announcer who says: "Good morning, and now for today's referenda. For each menu choice press 1 if you agree, press 2 if you disagree. If you wish to recall your member, press 3. On voter

thresholds in excess of 80%, your member is wired for instant self-destruct. Get ready. We'll be right back following the by-election results from Friday's recall vote. But now, a brief message from the chief referendum officer regarding the rules for next week's 'Best Question Prize,' an all-expenses paid trip to Queen's Park, where you'll be the personal guest of the Speaker."

Well, clearly there are limits.

Let's now take a jump back in time to fifth-century Athens, when radical democracy really did exist, if ever so briefly, including recall. It's a dream we never lost. The paradox is that it flourished only under the benign dictatorship of Pericles. The Athenian form of recall was a referendum where the people assembled by tribes in the market square for the annual casting of the ostrakons. These were nothing more than potsherds on which the name of the least favourite person was scratched. If it was decided by vote that an ostracism should be held, then the potsherds were cast. The guy with the most votes lost. Now that's a neat concept, a kind of fifth-century negative marketing option. The scratcher threshold was 6,000 votes. As for Pericles, he died of the plague and that signalled the end for radical democracy in Athens, but we never lost the dream.

I'd like to focus on the dream of radical democracy. I'd like to see it become a reality in Ontario. If one is mindful of history and deeply respectful of the contemporary mantra that accepts Murphy as a truthsayer and O'Toole's law, which states that Murphy was an optimist, as benchmarks for pragmatic decision-making, then we have a chance.

Now it's time to take the direct democracy dream and make it so it won't "get broke." We don't want to have to fix it. We want it to be flexible and fireproof and possess integrity and be long-lasting. That's a challenge.

There are two concepts I wish to introduce. One is subjective, the other objective. Look at them as foundation elements in the direct democracy equation. The first says that power, once given, is not lightly surrendered, so we'd better get it right the first time, or boy, are we in for trouble. The second recognizes that the political power matrix we have evolved since Roman times stands on the premise that power equals legislative or mandated authority, plus influence. The Romans called it *auctoritas* and *dignitas*. If employed judiciously, an elegant equilibrium exists. It is only when the balance is severely disturbed that we experience the extremes of anarchy at one end and despotism on the other. More often than not, we exist somewhere in between. There are no egalitarian societies. The ideal states that we come as close as we can. For us in Ontario, that's always the next election.

By going boldly, we need to preserve our precious quintessential democratic equilibrium. Otherwise it's turn on those TV sets and get ready to vote. Or, in the alternative, we will have created a hollow exercise in a crass attempt to mimic genuine participatory democracy. That's a lot like drinking stale beer. There are risks, but this one's worth taking. What then of surrendering power and still maintaining social and political equilibrium? That is the art of the art.

As I reviewed the direct democracy document put out by the Harris government, two things were immediately

evident. First, the initiative is well-timed politically. Second, the document is thoughtful and well constructed. It is, however, more like a classic Chinese tangram than a jigsaw puzzle disassembled on the table. With the tangram, there are many ways to put it together, rather than one. The key would seem to be flexibility. This, however, suggests an elaborate set of parameters. It is the control measures rather than the will to do it that will make or break the referendum initiative.

The ability test: One is reminded of the six Ps of political survival: Proper prior planning prevents pitiful performance. If we are to succeed with any direct democracy initiative, we absolutely need to subject the process to an ability test. I wish to present you with six principles which should govern referenda in a general sense. They should be fundamental to any referendum policy you legislate. The question, the process, the administration and the organizational structure must meet all — not just some — of the conditions. They are: accountability, affordability, compatibility, credibility, manageability and feasibility. Like the Chinese puzzle, they are closely interrelated, fit together in many ways and, consequently, are interdependent.

Let's take them one at a time. You can put them in any linear order that finite possibility and logic will permit. A circle may seem more rational, but a sphere more logical. Perhaps, since this is politics, a parallel universe is suggested. Reality, however, rules and we have to stick with the real world for now, anyway.

Feasibility: This is the sanity check. Flexible parameters are critical. The process must be able to accommodate both conservative and radical concepts, while at the same time having the capability to winnow out proposals that are frivolous, socially inappropriate, legally impossible or outrageously complex. For example, it would seem a referendum which said you can have the freedom to smoke anywhere as long as you don't exhale is, if for no other reason, flawed from the aspect of enforcement.

Manageability: Any process in direct democracy must have rules that make it simple and efficient to administer and deliver. This may suggest interactive media rather than the ballot box. Above all, it must be comprehensive to the politically challenged — and that's most of us. Look at the propensity of government bureaucrats to complicate things beyond all reason. This needs to be said. Just look at our property and income tax systems. If war is too important to be left to the generals, democracy is too important to be left to the bureaucrats. We need citizen input and validation at several stages in the process, not just the here and now.

1540

Affordability: This refers to the form and structure of the administrative and delivery systems. Frequency, structure and technology are key elements. We simply cannot afford \$100-million one-shot efforts. Clearly, creative solutions short of sponsorship are in order. "This referendum is brought to you by..." won't fly.

With respect to the referendum process, accountability refers to the concept of being accountable to rather than accounting for this or that. Who is responsible to whom and for what poses an interesting question. Surely pride of place must go to the electorate. The dynamics which

exist among and between the various stakeholders seem to suggest a more complex set of reciprocal, and consequently interdependent, relationships. These include the proposers, managers, legislators and bureaucrats who are supposed to deliver the proposal.

The electorate, for their part, belong at the centre of the sphere as either spectators, participants, beneficiaries or victims, depending on the nature and stage of the process and subjective perception.

In the context of referenda, "compatibility" refers to the concept of "compatible with" — for example, jurisdictional matters and statutes, the Constitution, the laws of the land, widely accepted social custom and so on.

In respect of the law, what's in and what's out is relatively straightforward. In the matter of social custom it's often a dicey and highly subjective matter. Can we rule out the radical? We would do well to remember that what was deemed unacceptable in the 1960s is institutionalized practice today. It's the kids from Woodstock who are carrying the briefcases and sitting in the Legislature today.

Credibility: This is critical and deals with the integrity of the referendum process in the full context of both concept and execution. This is where the threshold safeguards and limits suggested so well in the government paper need to be blended into the matrix.

We should be guided by the fact that belief is easy to establish but also hard to sustain. We all want to be optimists at heart, but once doubt and suspicion creep in, short of a miracle, the process is doomed. That is why in this country we don't elect governments; we vote them out of office. Just ask David, Bob and Brian.

The world turned upside down: Since the Harris government is committed to the concept of direct democracy, one is bound to ask: What are the limits? Who's in and who's out? What's in and what's out? What are the criteria for acceptance? Is the response fixed or graduated? Who gets to ask the question and who gets to vote on it? When the drafters of the legislation produce their final effort, will it pass the ability test?

It is my submission that unless the referendum process is open to individual citizens or citizen groups, it will be deemed a failure. Having said that, limitations and fireproofing are recognized as important considerations. How do we protect the process from lobby groups? What controls do we put on campaign funding? How do we make sure that politicians are contributors to the process but do not control it? Can business and corporations play into the process either directly or through surrogates? Do we deal with referenda in a graduated way or in an all-or-nothing, pig-and-the-python scenario? Let me provide you with an example.

If a genuinely open referendum process was in place today, would the Harris government place the question of property tax reform before the electorate? What form would the question take? Could a counterreferendum be launched? Would the public accept the concept of MVA or AVA in the face of near-universal homeowner dissatisfaction and protest? It's an interesting dilemma.

How much of the Harris Common Sense Revolution would be placed before the electorate? Would Mr Harris consider his government bound by the result? When one

views the Legislative behaviour of the present government regarding property tax reform and other issues, one is faced with a stunning paradox. The doors are locked, the phones are off the hook, letters go unanswered, the cabinet has decided and that's all, folks.

Bill 26 comes to mind. How on earth would that have passed a referendum? That was really the pig and the python. If and when Mike Harris introduces a genuine referendum bill granting direct democracy, will he ever have to adjust his way of doing business.

If the property tax question was put to the public in any way other than, "Are you for or against property tax reform — yes or no?" the issue would undoubtedly fail by an overwhelming majority.

The civil service — never first but last: I would like to touch briefly on the civil service. How do we keep them from thrusting their agenda on municipal and provincial legislators, or attempting to massage the political process from within? Let's accept the political reality: Given a real or presumed interest, interference should be recognized as a natural consequence of any political initiative. It is therefore essential that the referendum process be protected by making its administration independent of the Legislature and remote from the civil service. The Ombudsman's office could serve as an example; that's the integrity factor playing in. It was Pogo who said, "I have seen the enemy and he is us."

Sanity through sequence: The sequence in any referendum process should follow a clearly defined order that begins with the proposer and ends with the implementing body. That's the civil service. It seems that all too often the political world gets turned upside down. Incidentally, *The World Turned Upside Down* is a tune the British flute and drum bands played when they stacked their arms and surrendered at Yorktown to end the American Revolution.

Should there be referenda? Yes. We applaud Mike Harris for his direct democracy initiative. Do we need to pay attention to the six Ps of political planning? Yes, we do. Should the process be genuinely open? Yes, it should, and to everyone and any rational question. We should, however, be mindful that before we push the throttle wide open we should check to ensure that the controls have been tested and are working. Then we should adjust the speed in a series of carefully evaluated incremental test runs.

As with all things there are risks. Let's go for it. Pericles and all of Athens would be proud.

Mr Wildman: I apologize; I had to take a call from the government House leader so I wasn't able to be here for the whole presentation.

Obviously, you're in favour of moving towards a system which would allow for direct citizen participation. The Premier, when he was running for election, indicated that he believed that tax increases should be subject to referenda. You mentioned some questions about tax reform. I would suspect that if you had a question saying "Are you in favour of tax reform?" many people would vote yes. It's when you get to the type of tax reform that you end up probably with a no. Do you think tax increases of whatever type, whether property tax, sales tax, income tax, should be subject to referenda?

Ms Burtin-Fripp: I think tax reform certainly should. Tax increases are often a function of more than one level of government.

Mr Wildman: Let's take something purely within provincial jurisdiction like the provincial sales tax; not a question of harmonization with the GST or anything like that, but just if there were a suggestion that it should be raised by 1%. Should that be subject to a referendum in order to be approved?

Mr Clark: Let me take a little whack at this. I'll strip off my political colours, by the way. I am a Tory. I've been one my entire life. I was one of Mr Leslie Frost's pallbearers. I thought it was fair to tell you what my political stripe was, although I tell you it's fading.

Mr Wildman: One of Leslie Frost's nephews lives in my riding. He's a Tory and he actually votes for me once in a while.

Mr Clark: Everybody has their hangups. Anyway, I guess at the last election — it's not my organization, but Mr Paul Pagnuelo of the Ontario Taxpayers Federation — I believe, every Tory candidate saw him —

Mr Wildman: He appeared before the committee.

Mr Clark: That's right. Anyway, the penny's going to drop on that one. Should there be a referendum on tax matters? In the paper it says, "Yes, I agree that there should be." May I qualify that with one thing? You can't allow the system to be totally paralyzed and the legislators to be in some unreasonable position where there's got to be a referendum every time anybody turns around. That's not where I'm coming from.

1550

Mr Wildman: I understand that. Two things I'd like to raise with you: I mentioned to one of the other presenters that I come from an area that is very close to northern Michigan. Michigan of course, as you know, has referendum legislation. Last year they had to close the schools in Sault Ste Marie, Michigan, in May because the local school authority had run out of money. They did have a special vote about raising a special levy in order to allow them to have the school year continue until the normal closing time at the end of June. Surprise, surprise. The voters said no, they didn't want to pay more taxes, so they closed the schools.

Do you think questions of that sort should be always subject to referenda, or would we run into difficulty? It must be very difficult to persuade voters that they should pay more when they think they're already paying too much.

Mr Clark: Within my own executive there's a sort of polarity of opinion. One individual, a former MP, says, "I don't want anything to do with referenda, but if they're going to do it, I'd like it to be as soft as possible." On the other end we have Mr Pagnuelo, who is an enthusiast. I try to come down with a middle position. I'll answer your question very directly. Should the Legislature abandon its authority and its responsibility to act in situations like that? The answer is no.

Mr Wildman: The other side of the coin related to the raising of revenue is the expenditure of resources. Would you think it would be reasonable that if you were to have questions of raising of taxes subject to referenda, ques-

tions related to the cutting of public services should also be subject to referenda?

Mr Clark: When I was writing this speech, I tried to edit it down fairly heavily. There was a section where I dealt with that, the business of cutting down the hospitals and so on. That's why it was important I tell you my political stripe. Do I support Mike Harris and his reforms? Yes. Do I think that's necessary? Do the legislators have to act? I submit to you that if every single last thing of cutting down the bureaucracy, for example, was put out for a referendum, the system would shortly become paralysed. That's why I talked about parameters.

When I read the government document, I found that it suggested form but not structure. What I tried to do here was to hint at structure without telling the legislators how to do it. That's not my place.

Ms Burtin-Fripp: I think there are quite a number of areas which don't lend themselves to the referendum. Obviously certain moral issues, things that are related to religious points of view, do not, and there are certain things which we would not have today, civil rights and so forth, if they had been put to a vote. The role of the minority is also important, and past values have changed in the present.

I think, vis-à-vis your question about cost and effect, that in any referendum, if there's a question about a particular measure, the effects of that measure should be made known or at least should be laid out as potential so that people cannot make a simple decision and find that the effect of that simple decision is much more complex than they had thought.

Mr Wildman: I would think if you were having a vote on whether to close the local hospital alone, you would never close the hospital.

Mr Clark: Let me give you a little more insight. When I wrote this thing yesterday, I realized it was going down to 3:30, blood-sugar-low time, and I did go and read back into history. I didn't do the Athenian thing off the top of my head. I don't know if you see Mike Harris as Pericles or not, but interestingly enough, radical democracy flourished only under benign dictatorship. There are paradoxes all over this thing. You've got to be really careful —

Mr Wildman: The slaves didn't have a vote in Athens.

Mr Clark: The helots were in fact in Sparta, which is why they never progressed culturally. They spent too much time suppressing the helots, whereas the Athenians had a little freer society and prospered.

Mr Clement: I thank you for your comments. Just as Pericles from time to time admitted to some mistakes, such as the Peloponnesian war, I'd like just like to put on the record that obviously our government — I think our Premier admitted that if he had to do things over again on Bill 26, for instance, he would have done it in a different way. So we're still learning as we're going. We're as human as everybody else, so mistakes in thrust and in direction do occur, which brings us back to the referendum in a kind of way.

I'm not trying to play true confessions here, but when I was involved in Bill 26, I was trying to keep a gauge of

my constituents and how they felt about the omnibus bill and what sort of reaction they were giving to me. I will admit that I found it very difficult to gauge accurately what people were thinking, because I had lots of letters and lots of phone calls, but when I did my door-knocking it was less of an issue and I had people saying: "Full speed ahead. You've got to do the tough things now or we'll never see the light of day again." So it became very difficult for me to exercise informed judgement. If my sole criterion of my vote was how my constituents were thinking, it was very difficult to gauge in that very complex issue what that view was.

To turn it back to referendums, if we had a citizens' initiative approach, if a government took a wrong step, which many argue Bill 26 was, at least in the process in which it was done — and the Premier has admitted he would do things slightly differently if he was allowed the opportunity to recast history. If there is a misstep by government, do you agree that a citizens' initiative is one method whereby if there are enough Ontarians who feel there has been a serious misstep in terms of public policy, they can correct that misstep?

Mr Clark: Are you talking about a recall of the entire government?

Mr Clement: No, I'm not. I'm talking about if there was a citizens' initiative saying: "We don't like Bill 26. We want to see another creative way of dealing with the issues encompassed in Bill 26, but we don't like Bill 26. Please repeal it."

Mr Clark: I realize certain realities exist. After your conscience search, you went and did what the party whip told you anyway. The party was going to vote that way, and they did, and I don't want to climb into the confessional with Mike Harris as to whether it was right or wrong to do this. It's law now, and that's that.

During a process of debate — and there wasn't much allowed then — should there be the opportunity for citizens' referenda to be raised? The answer from the document here was clearly yes, but I equivocated a bit and said, "For goodness' sake, the control measures have to be there." This thing is not totally thought out, and I've put a little note at the bottom that there needs to be more input, more consultation and more thought than sort of, well, you're taking the temperature of this thing right now. I think you have to do a little bit more with the patient than that.

A great deal has to be done to get this thing so that it's workable, and I'm saying start in a way where we would go slowly. Should we have citizen input on major issues? Yes. But not every time you don't like something, you rush forward. Heavens, that would disrupt the legislative process and bring it to a standstill. That's where you tighten down the parameters, especially initially. Let's go back to the fact that power, once given, is not lightly surrendered. Just try and take it away if you give too much. Better to do it incrementally.

Mr Clement: Our government is committed to referendum legislation.

Mr Clark: I know that.

Mr Clement: That was part of our campaign and we feel certainly an obligation to go forward as a result of the election. But if we had the appropriate thresholds,

then, which is to say it's not at the drop of a hat but that a certain number of citizens within a certain period of time have to sign a petition — it has to be electors, it can't be non-eligible persons. We've heard some talk over the last day or so about it being such that it has to be within a certain percentage of the constituency so that it's not isolated in Caledon or Mississauga or what have you. With those sorts of parameters, as you call them, would you feel more comfortable with it?

Mr Clark: I come from the country and I'd like to leave this little aphorism on the table. You don't want to be crying after the cow's left the barn. What you want to do is do something before. So if there should be any questioning of a process, it should perhaps be before you enter it or as almost a fourth reading or whatever you want. I wouldn't do it after the legislation was out there and try to roll it back.

Mr Clement: I'm not following you in terms of your example.

Mr Clark: I'm talking about sequencing something. In a particular piece of legislation that it might appear was odious, Bill 26 for example, or that should have been packaged out in any event, where Mr Harris apparently says he would have done it differently, had the electorate been consulted in some form of referendum at that time — it would have been better to do it before rather than after is what I'm saying.

1600

Mr Phillips: I appreciate the presentation. What I'm increasingly finding is that many people seem to be in favour of the principle of a referendum, but the devil is in the detail. As soon as a group finds that if we implement their ideas, it leads to this — for example, we've heard groups who are very interested in making sure that they can hold a referendum without too much impediment in holding it, only to find that therefore on a whole bunch of other issues a referendum can be held. Suddenly I think we find cold feet.

I'm trying to get from your organization just some direction of how you would like to see the legislation framed. Also, we've now heard from several groups that — well, the government is very worried about well-heeled special-interest groups hijacking government. They've never identified who these well-heeled groups are who will hijack government.

Mr Clark: Their contributors.

Mr Phillips: I don't know who they are. But the referendum is designed to get at those scoundrels who have hijacked government. In practical terms, if the government were to proceed with referendum legislation, should it contain spending controls on the sides involved in the referendum, should there be some thresholds that people must meet in terms of numbers requesting a referendum, and should there be any criteria around what issues referendums could be held on?

I thought you raised some good points, frankly, on perhaps the areas where referendums shouldn't be held. Do you have any advice for the committee on that?

Mr Clark: The document suggested that, yes, we do it; the people should have input. Other agencies should be able, I suppose, to raise referenda. Interestingly enough, can the corporation and the PACs play in through surro-

gates or whatever? There's a truism in politics: Ain't never a corporation cast a vote. But you can massage the process in other ways. When you look at the margins in an election, you're going to run one. I've spent a lot of my life electing politicians, not sitting here doing this. One's acutely aware of the margins.

Should there be that kind of input? It's going to be a sham if they don't. Clearly the public will consider themselves ripped off. So now we're down to a matter of degree, and I said go ahead incrementally. Should there be limits? "Incrementally" presumes limits. In the finance section, in that little sanity check that we gave it, within those criteria, yes, there absolutely have to be limits; otherwise some PAC would come in and spend millions. On the other end, you've got the extreme in Quebec where they sort of say all the funding's got to go through a particular way, in a form, but that's not a bad idea.

But go slow. This thing's going to happen. The Harris government is going to do this. I know it. I support them, but the message is to do it with some sanity checks on it. Do it with parameters, but make it an open process and don't, for goodness' sake, turn around and do something where it's an absolute transparent scam. Because I'm telling you guys, the Tory government is walking, on taxation alone, down a razor blade. We can't get that message through to Mike Harris. It's one of the reasons I came here today. There's a classic referendum issue.

I'm out there in the boonies checking with people. I defeated market value, referendum, with a little hit team last year. We put holes in it. And by the way, we caught the civil service up to their eyeballs in involvement. We got their internal memoranda traffic.

Mr Phillips: Would you regard this property tax as the first referendum issue that you would see the government using as its first test case?

Mr Clark: It's the hobbyhorse I ride, but the answer is, not necessarily, if I divorce myself from my own issue. But the legislation is coming up now, so the calendar might dictate the priority rather than the issue itself.

Mr Phillips: Would that be an example of an issue that should be taken to a referendum?

Mr Clark: What I'm afraid of is that by the time the Harris government gets to passing the referendum legislation, all the juicy things that should have gone out will be gone. Then we'll be crying after the cow's left the barn.

Mr Phillips: My question was, is that the sort of issue you would see taking to a referendum?

Mr Clark: Absolutely, without question.

Ms Burton-Fripp: If I may, one of the things that concerns us is who decides on which issue, what are the criteria for deciding which issues should be dealt with? How many are there? Would there be a maximum in any calendar year? Who decides on the wording? As we all know from public opinion polls, depending on how you ask your question, you can determine a fair amount of the result. How often could there be counter-referenda? If I don't like the result of today's vote, does that mean I wait six months and try again to undo it? These are the kinds of chaotic things that can come out of perfectly good intentions.

We'd like to say that you should be raising as many questions about the process as possible. Do a kind of devil's advocacy of everything: How can it be misused? If it can go wrong, somewhere along the way it will go wrong and it won't benefit anybody and may polarize the province in very dangerous ways.

The Chair: I'm afraid I have to conclude this at this time, but I want to thank you very much, Mr Clark and Ms Burton-Fripp, for coming in and making this presentation. We certainly appreciate your advice and we'll take it under advisement.

Ms Burton-Fripp: Thank you.

TAXPAYERS COALITION OF CALEDON

The Chair: The next group we have scheduled is the Taxpayers Coalition of Caledon, represented here today by Mr Don Crawford. Welcome.

Mr Don Crawford: Mr Chairman, members of the standing committee on the Legislative Assembly, I am honoured to have the opportunity to take part in the democratic consultation process by making this brief presentation to you today. I am sad to say to you that I will not be speaking for 30 minutes; my limit is probably five to 10. If the questions are brief, maybe we can discuss the outcome of tonight's hockey game.

My name is Don Crawford. I am chairman of the Taxpayers Coalition of Caledon. Our objective is to freeze or lower taxes and control spending at all levels of government. Our group is part of the larger Taxpayers Coalition of Peel and associated with the Ontario and Canadian Taxpayers Federation.

Taxation is our concern, our only concern, and for the most part my presentation will be confined to that issue. I will, however, attempt to address some of the other concerns outlined in Your Ontario, Your Choice: A Preliminary Look at the Referendum Alternative.

Our organization supports the implementation of referendum legislation to deal with tax-related items. We believe there is a commitment by this government to bring forward such legislation.

On May 30, 1995, Mike Harris signed the taxpayers' protection pledge, as did all but one of the PC candidates, and some other party candidates contesting that election signed it. This signed pledge was a commitment to support the immediate passage of taxpayers' protection legislation that would, among other things, make any increase in existing taxes or any new taxes subject to approval by the voters of Ontario in a binding referendum.

The proposed referendum legislation should do just that, and we would support that initiative, thus fulfilling yet another election promise made by this government. We would ask that you get on with the legislation, as promised.

Our coalition would further petition you to put the necessary legislation in place that would amend the Municipal Act and make it mandatory for municipalities, regions and school boards to follow the same referendum procedure related to increases in property taxes.

Taxpayers in this province are frustrated by the ever-increasing spiral of taxes, fuelled by out-of-control

spending and sometimes unaccountable spending by all levels of government. Given the opportunity to control tax increases by way of binding referendum will go a long way to restoring the confidence of Ontarians in the system.

1610

This government has demonstrated that the way to increase revenues is not by increasing taxes but by creating jobs, creating an environment for business to thrive, to improve our soft economy and fuel a recovery that will carry us well into the 21st century. We applaud the government for that.

We believe a fundamental key to taxation referenda is the expansion to the municipal level. Under the present Municipal Act local governments have wide, sweeping powers of taxation, usurious penalties and draconian rights of seizure and sale of assets. We have seen small businesses shut down in our community by bailiffs seizing their assets, summarily selling off portions of those assets on behalf of the city to collect overdue business taxes. In so doing, they are exercising the very wide-reaching powers of the Municipal Act, which gives municipalities imposition and collection rights unparalleled by any other creditor or level of government.

A wise person once wrote that the only thing worse than taxation without representation is taxation with representation. Sir Richard Cartwright, a Canadian finance minister, wrote in 1878: "All taxation is a loss per se. It is the sacred duty of the government to take only whatever is necessary for the proper discharge of public service, and taxation in any other mode is simply, in one shape or another, legalized robbery."

I have read the consultation paper *Your Ontario, Your Choice*, and it has stimulated our thoughts on expanded referenda. I would share some of those thoughts with you.

Referendum legislation on tax issues and constitutional changes are issues that affect the province as a whole and should, we believe, be the foundation of any referendum legislation.

In arriving at what would constitute an issue for a referendum, one must be able to keep a balance between a participatory system of government and the duly elected representatives' obligations to govern and make decisions. A referendum cannot become a monthly soap opera which would in time lose its impact for those important decisions, nor should a referendum be used by any elected government to abdicate its responsibility to govern.

Changes to the education system or privatization of LCBO or Ontario Hydro are examples of possible referenda. How will the unorganized and unfunded general public be informed of both sides of these issues and not swayed by a deluge of telephone, television, radio and newspaper advertising paid for by well-organized, well-financed groups that are determined to get their message across and are prepared to spend thousands, even millions of dollars on professional ad campaigns to protect their vested interests?

A referendum is a costly exercise. As taxpayers we're interested in reducing the cost of government, not increasing it, and believe that referenda should be limited to those major issues that affect all people in Ontario.

If the initiative process is part of any referendum legislation, the percentage requirement to implement the process should be established at a level to prevent frivolous use of the referendum process for very narrow issues that should properly be dealt with by the government in its normal course of governance.

It is interesting to note that even though referendum legislation exists federally, only three times in our country's history has this process been used. It is further interesting to note that referendum legislation exists federally and in eight provinces, two territories and countless states in the United States. Surely it's time the citizens of Ontario are provided with this fundamental democratic right.

Recall is addressed in your consultation paper, and we would agree that people in Ontario should have the right to recall if their MPP is not performing at a level acceptable to the voters of a particular riding.

Simply put, we believe a referendum should be mandatory for the imposition of a tax increase or a new tax. If wider referendum legislation is passed, there should be a limit on the number of referenda allowed within a specified period.

We have some reservations about the use of electronic voting or mail-in voting as an option to traditional polling methods. These concerns would relate solely to the greater opportunity of abuses or rigging that could be available with those methods of voting.

In summary, we support the implementation of a binding referendum for tax increases. We can see merit in a greater use of the referendum opportunity for important issues if the inherent pitfalls of such legislation are addressed.

Your task is not an easy one, and we wish you the best of luck in your deliberations. I'm prepared to answer any questions.

Mr Clement: Thank you, Mr Crawford, for taking the time to be a part of our committee process. As a person who has a business in Brampton I take your views seriously.

I know you had originally focused in on the taxpayers' pledge, but from what your presentation indicated, you eventually looked at the wider issue of referendums as a result of the discussion paper and some comments that it made.

I've been asking this frequently and I just wanted to get a sense from you: What sort of thresholds do you think are important to strike the proper balance between the access to this democratic process with the threat of constant referendums leading to paralysis of the decision-making process in Ontario? What are you looking for?

Mr Crawford: I think the question you've asked me is a real problem, from what I've read in the paper: How do you determine that? How do you keep the government from being bogged down by frivolous or narrow referenda? It's a very difficult thing. Somehow something has to be established as criteria. Certainly I don't have an answer for that. I wish I did have, but I don't, and I can see it as a major problem in the whole legislation.

We in the taxpayers' coalition movement hope that the mandatory requirement for referenda on tax increases

doesn't get lost in the shuffle of all these other problems related to other types of referenda.

Mr Clement: I can assure you in that regard, because the discussion paper reiterates what historically has already been on the public record, namely, that Mike Harris, prior to becoming Premier, felt that constitutional amendments should definitely be subject to referendums in Ontario; and secondly reiterates what the party and the Premier said during the campaign, namely, that tax increases and the casino issue should be brought to the people.

I want to turn, if I have time, Mr Chairman, to one issue you raised, and I don't know whether it has been raised in this particular way yet in our process here: the role of referendums at the municipal level. Through the Municipal Act and the Municipal Elections Act the government of Ontario and the Legislature of Ontario have a great deal to say about municipal processes. I gather, from what you're saying, that you would like to see us, as part of this review, to also put some constraints or, I suppose to put it in the opposite way, allow for the opportunity of citizens to initiate a citizens' initiative referendum at the municipal level on tax increases as well. Is that what you're looking for?

Mr Crawford: That's correct. Yes.

Mr Clement: Could you just expand a little bit on why you think that's needed?

Mr Crawford: One major problem that seems to be happening right now with the restraints that the government has put on funding to municipalities is that municipalities are under a lot of pressure to increase taxes to property taxpayers. If at the end of the day taxpayers in Ontario are worse off or no better off than they were at the beginning of the day because of the downloading and increase in tax at that level, which is somewhat uncontrolled in a lot of cases, I think the whole battle has been lost.

In other words, there's no point in us saving \$300 in our provincial income tax only to have to spend \$800 on increased property taxes, in after-tax dollars, by the way. I think this government has to address that because it's a major problem that exists out there in Ontario and can only be addressed, I believe, by the provincial government. Local governments don't seem to want to take the initiative to reduce their sizes, let alone take something into effect about a referendum for taxation.

Mr Clement: Let me ask this, because if I don't, I know Mr Wildman will: If we are looking at tax increase referendums, are you prepared to say that if an initiative were in place to review service cuts, that also should be on the agenda?

1620

Mr Crawford: I would think that service cuts probably would end up being on the agenda somewhere down the line because that probably has to happen.

Mr Wildman: For referenda?

Mr Crawford: For referenda. But there are things going on that are just simply unexplainable in property tax increases by boards and regions and municipalities, so we don't believe they're at a point where reduction of services is a problem for them. If they can find enough money to spend \$60,000 or \$80,000 on a study to see

how well they're doing in the public's eye, then they sure can find enough money to keep the wading pools open. We don't see yet that we're at that position, as we see it, anyway.

Mr Phillips: I'm acutely aware of the taxpayers' protection pledge, because I think it did get the government a lot of votes. I refused to sign it because I didn't believe it.

We've been told today that even though this is a discussion paper on referendum, that it will lead to legislation on referendum, that it is the whole debate we're going to have on referendum, the taxpayers' protection pledge on referendum is going to be dealt with separately. I gather that commitment to the taxpayers of a referendum on any increase in taxes won't be part of this legislation; you can expect that some other time.

Mr Clement: Who told you that?

Mr Phillips: I think Hansard earlier today would show that when I said to the taxpayers' federation, "Are you surprised that the government paper doesn't include that?" they said, "It is our anticipation the government will deal with it separately." If that is incorrect, you correct the record. Is it the intention of the government to incorporate the taxpayers' pledge in the referendum? Will that be part of this legislation?

Mr Clement: We are seeking input on that. That's why it's part of the discussion paper.

Mr Phillips: No, but I think earlier you said you'll deal with that later. That was what we were told earlier this afternoon, that they would deal with it later. Does that come as a surprise to you and would the taxpayers' federation be surprised if it were dealt with separately?

Mr Crawford: I think the surprise to us would be that it was dealt with as part of this legislation and it dragged on for a long period of time. That would be bothersome to us. We believe the commitment that was made in that pledge was to — I have mine in front of me and I think it says something about "quickly" or "expeditiously" or "immediately" to bring forward that legislation.

Mr Phillips: Immediate passage.

Mr Crawford: I don't think we would have a problem if it was not part of the referendum legislation if that requirement was brought into law, if legislation was passed to make that an enforceable situation.

It would be tidy to have it as part and parcel of the referendum legislation, but if it's not possible and it's dealt with separately, that would not be a problem for us. It would be a problem for us if it wasn't dealt with.

Mr Bartolucci: Mr Crawford, you've clearly indicated that any new tax or any increase in tax should be the subject of a referendum. What other extremely important issues do you see being the subject of a referendum in Ontario?

Mr Crawford: The only one at the present time that I can think of is some constitutional change or something that would affect Ontario's position vis-à-vis the country federally, the Quebec referendum problem or something like that. I could see that that immediately would be something that may want to be put to a referendum.

Mr Bartolucci: So constitutional change or tax increases only.

Mr Crawford: I can't think of too many others that should be at this point in time. I'm not suggesting there are not, but none come to my mind.

Mr Bartolucci: Did you agree with Mike Harris before he was the Premier when he said a user fee is a tax?

Mr Crawford: Yes, I agree with that.

Mr Bartolucci: So all new user fees then should be the subject of referendums?

Mr Crawford: If one follows the premise that a user fee is a tax. I believe in my own mind that they are, because a municipality can freeze taxes and increase the user fees by 12% or 13%. Therefore, if they're required to have a referendum for a tax increase, then I believe in the package of their budget they should be required to have that same referendum.

Mr Bartolucci: I agree with you 100%, by the way.

Mr Crawford: I believe they should.

Mr Wildman: I'm glad Mr Bartolucci asked you that question, because I was going to ask it. I agree with him and with you.

As you indicated, if government is going to downsize — and to cut expenditures, oftentimes governments at the senior levels, whether it be federal to the province or the province to the municipalities, download services and costs to other levels of government, and this government has done that. This government has said to municipalities that certain things that were done by the provincial government in the past will no longer be done and at the same time has cut transfer payments to the municipalities. So you quite rightly pointed out that municipalities and school boards are tempted, while making some cuts, to also increase property taxes, so you just move from income taxes and sales taxes to property taxes. Certainly some would argue that property taxes are more unfair than income taxes. So you suggested we should also have referenda at the municipal level.

Do you think it is likely that taxpayers, many of whom feel that they're already overtaxed, would actually vote for a tax increase in order to keep the schools open?

Mr Crawford: If that referendum was done today I would say, no, they wouldn't, because they feel very strongly that there is overspending at that level. I think in the future if that overspending changes, I have confidence that they would be able to deal with that problem down the road. But it's very difficult to ask somebody to approve of a tax increase for a school board that announced recently it's going to build a golf course. How can you deal with that? Obviously there are still some problems out there that we have to come to terms with.

Today most taxpayers would probably say, "No, I'm paying enough property taxes." But down the road three or four or five years from now, they may take the alternative approach and say, "Hey, we've cut the thing to the bone, they've done their job, they need an extra 1%." Maybe at that stage we will approve it. Certainly I can see that happening.

Mr Wildman: The question is of course what happens to the education of students in the next three to five years. I have mentioned in this discussion the experience in Sault, Michigan, where the schools closed in May because they couldn't afford to keep them open till the

end of June. They had a referendum and people, I'm quite surprised, voted against increasing their taxes.

If a user fee is indeed a tax — and we have a Premier who has made a pledge that all new tax increases will be subject to a referendum — the user fees that his government has imposed, say, on provincial parks that weren't there before, as part of the cuts and changes in the way they finance the operation of provincial parks, to follow your argument then, that user fee should be subject to a referendum. Is that right?

Mr Crawford: I'm not familiar with the fee you're talking about, but certainly I would think that should be part of the process.

Mr Wildman: Also you said you didn't think that referendums should be held too often or they would just become sort of like a soap opera, I think you used the term. I agree with you there. That has been somewhat the experience in California, where referenda are used extensively, and we had testimony earlier today that in Switzerland, where referenda are used extensively, only about 15% to 18% of the people actually participate in the voting.

The argument has been used in favour of referenda that the population doesn't get out to vote in general elections enough, that they're cynical and they don't think they really make a difference. So we have turnouts of about — what? — 65%, 70% and about 30% aren't participating. In the US, it's about 50%. Yet if you have a situation as in Switzerland where only 15% to 18% of the people are participating in referenda, doesn't that indicate that there's perhaps just as much cynicism in a system where referenda are the norm as there is in a system where we just have general elections?

1630

Mr Crawford: I hear your question. I guess my answer to that would be that it indicates there's a general cynicism of all government everywhere. Whether that government conducts referendum or whether it doesn't, people are just cynical. People say: "What can I do? I can't do anything about it." Canadians especially are of that temperament and I don't know that it indicates whether referenda in this country would cause a 15% turnout. I would have to believe that the people in this country are a little bit more politically astute and interested than to let that happen, but that could happen.

Mr Wildman: Obviously I have no idea whether that would happen. The reason I pointed to Switzerland is because it is one of the oldest democracies we have, 700 years old, and it also is one of the ones that uses referenda more extensively than any other jurisdiction. As a matter of fact, they vote almost every week on a referendum of some sort or another and they have very low turnouts. Not so much as cynicism with government, it appears to be a cynicism with the whole voting process.

The Chair: We still have a little bit more time. Although each caucus has had an opportunity, Mr DeFaria has indicated an interest in asking a question.

Mr DeFaria: Don, I personally would like to congratulate you for the excellent presentation and the excellent work that the Taxpayers Coalition of Peel has done in the past and is doing.

I'd just like to clarify a point. You mentioned on a question in general that user fees could be subject to a referendum. What if the user fee is for a new service or for a service that is used only by a small percentage of the population? Would you still consider that something like that is subject to a referendum?

Mr Crawford: The quick answer is, I guess there are user fees and user fees. If it's a user fee that affects 1,000 people, then obviously it's not something that would, I believe, require referendum. But if it's a user fee that affects the whole municipality or the whole province, then possibly it should be part of a tax or considered an additional tax.

Mr DeFaria: Right. But let's say it's a user fee for a service that is used by a small percentage of people in a municipality, less than 10%, and it's a service that the rest of the population in the municipality don't make use of. Would you think something like that would require a referendum?

Mr Crawford: I wouldn't think so.

The Chair: Thank you very much, Mr Crawford, for participating in our discussion today. We appreciate your input.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

The Chair: The next group on our agenda and the last group for today is the Ontario English Catholic Teachers' Association. I'd ask you to come forward and we welcome you.

One other thing, to inform the members, we actually have a cancellation tomorrow morning so we won't start our proceedings until 10:30 tomorrow morning.

Ms Marilies Rettig: Just to begin with, I'd like to introduce myself. My name is Marilies Rettig and I'm president of the Ontario English Catholic Teachers Association. To my immediate left is Claire Ross. He's our general secretary. To his left is Greg Pollock, executive assistant in the area of political action. To my immediate right is Paul Cavalluzzo, our counsel.

I would like to start by thanking you for the opportunity to come and present today. We are here as representatives of and spokespeople for the 35,000 members of the Ontario English Catholic Teachers' Association, teachers who work at both the elementary and secondary school levels, as well as occasional teachers of the separate schools in this province. It's appropriate that we are here this afternoon, from two different vantage points, certainly. First and foremost, those who have contributed the most, and most significantly, to the roots of democracy, both in an academic context and the root of democratic thought and process, are academics such as Plato and Socrates, and from an academic vantage point it's very appropriate that we are here as part of the educational community to discuss this issue with you today. But it's also very important, and perhaps more important from the vantage point of the very important role we play at the school level: imparting knowledge to our students, and certainly attitudes and processes to our students, so they become familiar with the democratic process and become citizens who are not only aware of the process but

contributing future citizens of this province. That is the premise on which we are here to present to you today.

As we begin the debate we look to the roots of democracy, the fundamental processes and principles which were so eloquently put forward by both Plato and Socrates. Plato's Republic deals specifically with how justice might be embodied in the ideal state. We believe, as OECTA and as spokespeople for teachers of the separate schools of this province, that this is the fundamental issue which must be addressed as this government contemplates the use of the referendum as an instrument in the political decision-making process. As an association of teachers in the separate schools of this province, we wish to express to you this afternoon our grave concern with the question of justice and how decisions related to what is just and what is right for the citizens in this province are to be politically determined.

Within our presentation this afternoon we will examine democracy both conceptually and in practical terms, thereby examining the relationship between the electorate and the government. We will differentiate between direct and representative democracy and the subsequent theories each espouses relative to policy formation. Finally, we will address the characteristics of referendums relative to both direct and representative democracy and the subsequent impact they could have upon the greater good within our society.

Mr Paul Cavalluzzo: The question of referendums raises basic issues of democratic thought and practice. In this brief — hopefully you'll have the opportunity and time to read it — we have attempted to compare the basic qualities and values which underlie both the system of government which Marilies refers to as direct democracy and representative democracy. The difference between these two systems or forms of government are critical in two areas which I think are important to the debate in which you will have to engage in terms of what recommendations you come up with. The first criterion is the relationship between the electorate and government representatives. The second is the discourse by which to determine what is in society's best interests.

We'd like to look at those criteria briefly from the first respect, that of direct democracy, which is the system in which referenda or referendums are normally prevalent. The political theorist who is the strongest advocate of direct democracy and referenda was Jean-Jacques Rousseau. In his treatise on the social contract — this was several years before Bob Rae; a couple of hundred years ago — he talked about political devices such as referendums, initiatives and so on. Rousseau, who is the patron of this form of decision-making, looked upon referenda as being an ideal way of determining what the will of the people was and he looked upon yourselves, political representatives, as being impediments to democracy and upon political parties as being impediments to democracy as well. Mr Rousseau mocked the British parliamentary system.

If you refer to page 7, you'll see a quote we've taken from his book where he says: "The English people," — he's talking about parliamentary democracy here — "believes itself to be free. It is greatly mistaken; it is free only during the election of the members of Parliament."

Once they are elected, the populace is enslaved: It is nothing. The use the English people makes of that freedom in the brief moments of its liberty certainly warrants their losing it."

The first thing we should be aware of is that the main patron of referendums is someone who had a great deal of distrust of the very system in which you're engaged: the system of parliamentary democracy and certainly the system underlying our own legal system and political system.

1640

The system we have in Canada and Ontario is what you've obviously heard and referred to as representative democracy, where the ultimate authority lies in Parliament. The theory underlying this form of government is that government will be in the best interests of everybody, that decisions will be made by rational discourse, by attempts by the representatives to engage in consensus-making rather than by having votes or plebiscites or polls taken in respect of important public issues. We trust our elected politicians to exercise good judgement. That's what parliamentary sovereignty is all about. With the exception of the United States and Switzerland, all western democracies exercise this form of government, this form of representative democracy.

It's the position of OECTA that the system of representative democracy is premised on the notion that strong, independent-minded representatives will be elected by the people and they will perceive their role as not pursuing local or sectional interests but as participating in the reasonable formulation of policies. Once again, apart from the representative, of course, the political party plays a very important role in a representative democracy, unlike direct democracy which, once again, views parties as being impediments to ultimate democracy.

The second criterion, and I've got to move on quickly in light of the time, is the discourse for determining the common good. If we look at it from the perspective of direct democracy, direct democracy views parties in such a way that it inevitably leads to a weak party system, and what is the common good will be what the majority of voters say is the common good. Representative democracy has a much more complex form of decision-making, which is not only the local interest but the provincial interest; the common good of all those in Ontario will be taken into account before policy decisions are made. The goal of the system is rational discussion, consensus and decision-making, not by poll but by discussion and consensus.

Finally, I'd like to talk briefly about the characteristics of referendums. As you will see in our brief, many commentators have stated that referendums are the antithesis to a system of representative democracy. It's very easy to say that a referendum is a pure form of democracy in the sense that the people speak. As you know from your history in high school, many totalitarian dictators used referendums frequently to implement the policies they already wanted to institute, so the question is far more complex and difficult than just espousing these kinds of simplistic views that referendums by definition are pure democracy.

As I heard earlier in the discussion before ours, referendums have been used elsewhere, but it's important to note where they have been used generally. In Canada at the municipal level, sometimes we'll see the use of referendums for things like liquor laws and retail shopping. On the national level we have seen the use of referendums on three occasions: in 1898 in respect of Prohibition, in 1942 in respect of conscription and in 1992 in respect of the Charlottetown accord.

However, generally speaking, where they are used, as was noted earlier, in Switzerland and in California and some other states in the United States — you will see on page 16 in our brief that we attempt to show where referenda are used — there are three main areas in which they are used. First, sometimes they are required by law to amend the Constitution, and that's the situation in Australia. For example, in Australia, as you may be aware, they will be taking a referendum on whether to retain the monarchy. Second, they are used to legitimate government policy. Third, they are used to transfer decision-making responsibility from the elected representative to the electorate for issues on which the government is reluctant to take a stand. In this situation referendums address politically controversial matters which divide political parties and populations at large.

This is one of the main concerns we have with the use of referendums, because we feel that the use of a referendum is a dereliction of public duty. We elect you to make important judgements. These are difficult choices you have to make, and history demonstrates to us that referendums are used to avoid making these difficult choices.

Our system of government is parliamentary democracy. It's a representative democratic system. All commentators to this point in time look upon the use of referendums as being the antithesis to that system.

I leave you with the words of two authors who have studied extensively in this area; this is at paragraph 5.10: "Representative assemblies are far from perfect, but they have several crucial advantages over referendums: Their members meet face to face regularly; they do not immediately or necessarily vote up or down every measure that comes before them; they discuss, refer, study, delay, amend, and give and take. Their decisions only occasionally approach unanimity, but their discussions approach the small group ideal far more closely than the discussions preceding referendums...In referendums, votes are the very essence of the decision process."

Ms Rettig: In moving to the conclusion of our presentation, I'd like to highlight another very grave concern we have in communicating that to you this afternoon: the concern for continued minority rights to exist in the way they exist today. Referendums pose a particular danger to minority groups. Referendums, by definition, determine policy on the basis of what the majority selects in simple mathematical terms. A study was done in Canada by the federal government. They put forward within that study and the context of that study, for that very purpose, that referendums are extremely damaging in this country, for they do not take into account the uniqueness of the different groups that reside within this country and by their very nature pit one group against another group. The

mathematics of it show that minority rights, when put to test and put to question, are not upheld.

You look at the United States. As of 1978 there were referendums held in five different states which proposed to prohibit discrimination on the basis of race. All those referendums lost. In the same time frame, several states held referendums which proposed measures that would allow and encourage discrimination on the basis of race. A number of these referendums succeeded. For example, fair housing referendums were held in which voters voted in favour of passing legislation which would allow property owners full freedom to decide with whom they would contract. The result was that homeowners could refuse to sell their properties to racial minorities without attracting any legal sanction. Similarly, referendums supported measures which would prohibit school desegregation by requiring students to go to schools which were geographically closest to their homes. A referendum in California adopted a constitutional provision which prohibited the construction of low-cost housing without approval of the majority of the community's voters. In 1992 referendums were held in Colorado which adopted propositions that denied equality of rights on the basis of sexual orientation.

1650

In each of these instances it was a majority that determined the continued existence, or lack thereof, of a right that should be espoused to a minority group.

A representative democracy has to look to the greater good of the entire society, of all constituents within that society. Moving to a referendum removes that obligation to do so, and it is our very grave concern, as spokespersons for the teachers of separate schools in this province, that we bring that to your attention and caution your movement in this area.

I speak from the vantage point of a teacher who is aware of the potential current move with respect to secondary school reform, and the thought that based on the responses of 500,000 yes/no forms that go out to parents who are citizens of this province, curricular or program reform may be determined that is not to the benefit of the school system and not to the benefit of students in this province. It is a very grave concern that curricular reform or pedagogical reform, which is all too important as we depart this century and enter the new one, would be contingent upon a mathematical equation, on an individual's perception of what they think is important for secondary schools or program at any level of education, rather than looking to the experts in consultation with other groups in society and determining through their measure what would be best for the students as we enter the new millennium.

Our conclusions are brought forward for you on pages 21 and 22. They highlight and provide a synopsis for you of the concerns that were brought forward by Paul Cavalluzzo and myself, and I wish once again to underscore the very real danger inherent in the use of such a decision-making process. We're more than willing to take any questions you may have.

Mr Bartolucci: I read with interest on page 5 of Your Ontario, Your Choice — I'm sure you read it as well — and this is the government speaking: "Our concept of

governing arises from a strong belief in individual choice, collective stewardship, and distributed responsibility for the future. In other words, we believe that individuals should decide their futures."

Over the course of the last 14 months, how would you grade the government with regard to teaching, teachers, students and education in Ontario with regard to that statement? As teachers you're probably the only qualified ones here to do it.

Ms Rettig: Thank you for the question. I'd like to impart two things. One is to express to you the concerns we have with teachers in terms of some directions of the government policy and changes that are occurring in the context of elementary and secondary schools across this province. We've underscored it on a number of different occasions and taken every opportunity available to us to express our concerns with respect to an agenda that seems to have only one bottom line: extracting dollars out, not looking to strategies by which we can truly enhance and empower the education system as we know it in Ontario.

I'd also like to address the quote that you just recited from the proposed policies and legislative changes. What is very disturbing is that changes in policy and legislation should be determined by individual choice; that was the heart of the concerns with which I concluded. Policy for this province and for our society should not be determined by tabulating individual responses based on what will be best for the individual. We have to return to the sense of community. Certainly when I look at our schools and what we attempt to do within the context of our schools, it's more important than ever that we espouse within them a strong sense of community so that students will learn how to care for each other and assist each other in the context of a school community and thereby enlarge that to society at large. It's very disturbing to see a government move in the opposite direction, where the sole and central factor is that of individual choice and individual concern.

Mr Bartolucci: You gave an anecdotal evaluation; I'll give a summative one. It's clearly an F in my estimation. Do you think that this legislation, that's going to pass eventually because they have a majority, will enhance that collective stewardship one iota?

Mr Claire Ross: No, I don't think so. When one thinks about the trust that has been given to us in our history, the trust of a parliamentary democracy based upon the kind of qualitative discourse that has been referenced by our lawyer, I have to wonder about the kind of Ontario we're looking to in the future; that is, the kind of Ontario in which we introspectively look within ourselves, push some kind of button or mark a ballot without the kind of dialogue that will bring into play a sense of the needs and the rights of others. We're going to be poorer for it. Once we start marching down the slippery slope of referenda, where is it going to end?

I heard, before I came in here, others suggesting that we would have a referendum for almost everything: provincial, municipal, school boards. Imagine the cost. Imagine the paralysis of our society if suddenly we take from our representatives — there seems to be a statement emanating from them that we are no longer interested in

government and, above all, we want lifted from our shoulders the mantle of accountability. I suggest that in many places in the States they are frozen into a paralysis of inertia resulting from the fact that they have embraced a tool which does not enhance but significantly detracts from the governance process.

Mr Wildman: This may sound unusual coming from me, as someone who has been engaged in partisan politics for a long time, but I do mean it sincerely. I think this is an important question and one that should be dealt with and discussed. I regret, in a sense, that this is coming before us on the basis of a promise made in an election campaign related to tax increases, because it does tend to colour the process. Also, the paper as presented betrays something you were talking about — Rousseau; it betrays a distrust of the parliamentary system as we know it. It indicates a distrust of politicians, a distrust of political parties and particularly of special-interest groups, that are somehow seen as subverting the will of the people by influencing politicians by whatever means.

In the view of some, perhaps in the view of the governing party, you are a special-interest group that might be accused of attempting to do that — not in what you're doing today, but in other activities you might engage in.

I must say, though, that if we could deal with this in a philosophic way and look at it dispassionately, there is some balance between the two: Rousseau's distrust of parliamentary democracy and Edmund Burke's complete trust in his own judgement and that the electors of Bristol elected him to make his own judgements. It's a balance in between. Any politician who cares about democracy attempts to strike that balance.

Having said that, one of the major concerns I have about referendum proposals is the protection of minority rights. That's why I think it's important that you have come before us. It has been suggested before the committee that we don't have to worry about that in Canada because the Charter of Rights and Freedoms is incorporated in our Constitution, so there could not be any referendum that would be contrary to the Constitution, would be ultra vires, and that even if there were some passed, they would still be subject to court action by the aggrieved minority and the courts could declare some decision that was ultra vires of it to be unconstitutional, and therefore we don't have to worry about that.

1700

How do you, as representatives of a minority education system guaranteed in the Constitution, react to that assertion that we shouldn't be concerned about minority rights because they're protected under the Constitution? I don't mean by that that we shouldn't be concerned about them, but that we shouldn't be concerned about the effect referenda might have on them.

Ms Rettig: Precisely. In the context of the brief presentation I made are the responses and certainly the history that's there for us in light of the decisions that have been made in different states where they've been utilized quite frequently. In each of those instances there were challenges to minority rights, and those challenges put forward were defeated and the subsequent minority right was not realized and not enabled. That same threat,

that same thing that happened down in California and various other states in the United States, would be a very real threat here in Canada.

Mr Cavalluzzo: The question you raise is a good one, but there are certain complications to it that I think we should underline in terms of this debate. First of all, even if one can subsequently go to court and have a decision overturned if it infringes upon minority rights guaranteed by the Constitution, one of the problems we see is that before you get there the kind of debate you see in a referendum dealing with minority rights is not the kind of debate one wants to see in Ontario. The choices are stark and the answer is inevitable, because if you're dealing with minority rights and you say to the majority, "What should the answer be, yes or no?" and that's the stark choice we have, the answer is inevitable, but the process of debate is very damaging in terms of the society itself. That's the first problem with saying, "Oh, well, the courts will always right the wrong after the fact."

The second problem I see with that is what I call the narcotic effect of referendums, that once we start using referendums it becomes a slippery slope: We start making all our decisions by way of referendum and in terms of constitutional rights. Then we may start using referenda to change the Constitution itself.

Mr Wildman: Frankly, I think if you are going to change the Constitution, it should be done by referendum.

Mr Cavalluzzo: But in terms of minority rights, that's the problem. I've always used this analogy, and it's a stark one, but I think it's part of the process. For example, after the Civil War if you threw a referendum in Alabama and said, "Should blacks be free and equal, as under the 14th amendment?" obviously the answer is going to be a question of head counts, votes.

Mr Hastings: Thank you very much for your presentation from OECTA. I would like to focus again on pages 16, 17 and 18, on your overarching theme about the application of referenda undermining in some way, shape or form the constitutionally protected rights of minorities in this country. Are you saying, in effect, that if this government instituted a referendum law in and of itself or through amendments to the Election Act, somehow or other the Constitution of 1982, the BNA Act of 1867 and the Charter of Rights and Freedoms would be superseded by our referendum legislation, that all the other groups that have presented this mythology about undermining of minority rights is simply a mythology?

I would also like to know where in goodness' name is the Canadian federal government study that you attribute the conclusions to in 5.13. Is it in footnote 6, Marquis, Referendums in Canada? If it is, it's the political and social affairs division of the research branch. What of? StatsCan? Secretary of State? Which ministry produced this particular study on which you've built your rather simplistic case, in my estimation, about undermining minority rights?

Mr Cavalluzzo: If you would like a copy of that article I can certainly provide it to you, if you'd like to read it.

Mr Hastings: I'd be very happy to get it.

Mr Cavalluzzo: I undertake to provide a copy of it and certainly will do that. But coming back to your

question in terms of undermining minority rights and what takes precedence, the Charter of Rights and the Constitution or a referendum bill, I don't think you heard my previous comments. The previous comments were that the Charter of Rights and the Constitution will not take precedence, subject to the exercise of the "notwithstanding" clause. Are you aware of the "notwithstanding" clause which basically permits the Legislature to override minority rights if it's specified?

Mr Hastings: Where has that been exercised in Canada except in the province of Quebec on language rights?

Mr Cavalluzzo: It's been exercised elsewhere, in Saskatchewan.

Mr Hastings: So you believe there is a susceptibility by most legislatures to disregard constitutionally validated minority rights protection legislation.

Mr Wildman: What if you had a referendum calling on the Legislature to —

Mr Hastings: Excuse me. I have the floor, I think.

Mr Cavalluzzo: The second point I raise is that even if you can subsequently validate your minority right in the courts through litigation, the fact is, as I pointed out before, the kind of discourse and debate that occurs prior to the referendum, in my view, is very damaging in terms of the societal interests and the long-term interests of the society.

The third point is that referendums may be used to amend the Constitution itself and that minority rights may be disposed of that way, in terms of changing the Constitution, which is a danger.

Mr Grimmett: I'd just like to say, first of all — and it may be the only opportunity I get to ever agree with Mr Wildman — that I agree with him wholeheartedly that we as elected people have to approach this thing both from Rousseau's point of view and also from Burke's point of view, to a certain extent, although I don't think anyone, except me here, in my riding particularly cares about Rousseau or Burke. I think I have to take into account their overwhelming views on these subjects.

Today we had a chance to hear from some people in British Columbia who told us that in 1991 there was a general election provincially and they also had two questions attached which many people thought were designed to help the incumbent government win; in fact, the incumbent government lost that election. But the two

questions which asked whether the government should bring in referendums were resoundingly supported by over 80% of the people who voted. I think that is likely to happen if we tried the same exercise in other provinces. I think that is a compelling argument in itself for us to take a close look at using this new or other form of democracy.

I don't think, as a representative of those people, that I can ignore that reality. The people who sent me here want me to, as much as possible, represent them. When you say in your paper that this might actually weaken parties, I think the people back home who sent me here would also like that idea, of weakening political parties, because they see political parties as something which prevents me from properly representing the people I represent. I guess I'd just ask you for a comment on how I'm supposed to act, given my understanding of what the people back home want me to do.

Ms Rettig: Certainly I can't speak for the potential number of people who would respond in your constituency in favour a referendum. All I can say is that as a representative of the separate school teachers of this province, we see some very grave concerns. One of the fundamental concerns we see is a distinct movement away, by you as political leaders and as elected representatives in Queen's Park, from assessing certain issues and certain decisions based on the greater good of each and every member of that constituency, despite what minority group or group they may represent, to assessing that based exclusively and specifically on numbers and numerical results that come in from a referendum.

Those are the kinds of concerns we've brought forward to you. They are concerns that deal with the very essence of democracy, the essence of political decision-making and the essence of the kinds of rights afforded to all citizens, at this point, in this province and across this country. Those are the kinds of rights that we feel are imperative to continue to remain for all citizens of this province and of this country, regardless of what minority group they may be part of.

The Chair: Thank you very much for your presentation. We appreciate your input and your advice.

That concludes our hearings for today. I remind committee members that we will resume our hearings tomorrow at 10:30 am. The committee is adjourned.

The committee adjourned at 1711.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)
*Mr Rick Bartolucci (Sudbury L)
Mr Dave Boushy (Sarnia PC)
Mr David S. Cooke (Windsor-Riverside ND)
*Mr Carl DeFaria (Mississauga East / -Est PC)
*Mr Tom Froese (St Catharines-Brock PC)
*Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
*Mr John Hastings (Etobicoke-Rexdale PC)
Mr Ron Johnson (Brantford PC)
Mr Frank Miclash (Kenora L)
*Mr Gilles E. Morin (Carleton East / -Est L)
Mr John R. O'Toole (Durham East / -Est PC)
*Mr Tony Silipo (Dovercourt ND)
Mr R. Gary Stewart (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Jim Brown (Scarborough West / -Ouest PC) for Mr Boushy
Mr Marcel Beaubien (Lambton PC) for Mr Stewart
Mr Tony Clement (Brampton South / -Sud PC) for Mr O'Toole
Mr Gerry Phillips (Scarborough-Agincourt L) for Mr Miclash
Mr Bud Wildman (Algoma ND) for Mr Cooke
Mrs Lillian Ross (Hamilton West / -Ouest PC) for Mr Ron Johnson

Also taking part / Autres participants et participantes:

Mr Chris Stockwell (Etobicoke West / -Ouest PC)

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

CONTENTS

Tuesday 10 September 1996

Referenda	M-227
Mr Ed Harper	M-227
Brampton Taxpayers Coalition	M-231
Mr Ernest McDonald	
Mr Paris Gardos	M-234
Taxpayers Coalition Burlington	M-238
Mr Frank Gue	
Ontarians for Responsible Government	M-242
Mr Colin Brown	
Canadian Taxpayers Federation	M-246
Mr Jason Kenney	
Mr Ted White	M-252
Mr David Mitchell	M-256
Direct Democracy Group	M-260
Mr William S. Wills	
Mr Ernst Kneisel	
Mr Darin Barney	M-264
Tax Equity Alliance	M-268
Mr William Clark	
Ms Carol Burtin-Fripp	
Taxpayers Coalition of Caledon	M-273
Mr Don Crawford	
Ontario English Catholic Teachers Association	M-277
Ms Marilies Rettig	
Mr Paul Cavalluzzo	
Mr Claire Ross	

CA20N
XC20
-L20



M-20

M-20

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 11 September 1996

Journal des débats (Hansard)

Mercredi 11 septembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 11 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 11 septembre 1996

The committee met at 1034 in room 151.

REFERENDA

FREEDOM PARTY OF ONTARIO

The Chair (Mr Ted Arnott): We are today continuing our discussions in our public hearings on the issue of referendums. We have with us this morning as our first presenters representatives from the Freedom Party of Ontario, Robert Metz and Lloyd Walker.

Mr Lloyd Walker: Thank you. I'm Lloyd Walker. I'm the manager of special projects for Freedom Party. I'll be starting our presentation. This is Robert Metz, the party president.

Good morning, ladies and gentlemen. To start with, I'd like to thank you for this opportunity to speak with you on the use of referenda in Ontario. I was quite pleased when I saw that the government had decided to open discussion on the subject. Make no mistake about it, after reading the Your Ontario, Your Choice document, I firmly believe discussion is needed.

I agree that referenda have the potential to be a great positive force in Ontario today, but like anything that powerful, they also have the potential to be very destructive. We must therefore approach the subject critically and carefully.

Freedom Party believes, as I do, that the government has a defined purpose: to protect individual freedom of choice and not to restrict it. Just as government has a definable role to fulfil, so too does a referendum. It's on that topic I would specifically like to speak.

I found, on reading the discussion paper, that the author has tried very hard to sell the referendum concept while somehow avoiding defining what it is. The section on the referendum alternative gives us a general and commonly used sense of the word, followed by four categories of referenda and the accompanying and different definitions of each. In the end, referenda can mean anything and everything, allowing us to talk about them using the same words, but each of us misunderstanding what the other is talking about.

The salesmanship and lack of definition have resulted in referenda being granted many positive attributes that can only be gained by misusing their power or misunderstanding their meaning. What we must discuss is what a referendum is and, equally important, what a referendum is not. As a result of that, I hope to establish a definition that will help us decide what a referendum is, when it can be used, why it should be used and what it should be used for.

In the discussion paper, referenda are described as a "tool of increased accountability." I can't agree with that. Decisions made by referenda are far more likely to be used as a tool to avoid accountability. The government is absolved of its role of leadership and can rely on the "We only did this because the electorate said to do it; we're not responsible" type of argument. The electorate is always to blame and the government always faultless. Accountability has gone out the window.

Also, the claim is made for improved public participation. While it is possible for a referendum to result in more public participation, if only because people go out and vote more than once in five years, I know of no correlation between referenda and the quality of participation. In fact, the first use of referendum gave us Prohibition, something that was far more than just a mistake; it needlessly curtailed the use of a product that I'll gamble every person in this room has at one time or other used and, I must add, has used peacefully. This exercise in what was termed "direct democracy" also resulted in increased crime as bootlegging became more prevalent. Perhaps Quebec came up with the most original solution to the referendum-caused problem when they simply redefined beer with less than 4% alcohol as a temperance drink.

The implication is also made that referenda will "make government work for" those who feel disfranchised. Given the rarity of referenda, this is highly unlikely. I would, however, look forward to returning and speaking with you on the subject of electoral reform, which has far greater prospects for addressing the concerns of the disfranchised.

The same can be said of Mr Harris's claim that referenda will play a great part in reflecting the will of the people. The best opportunity to do that is, without doubt, on election day. The best means to reach that goal is through election reform. Referenda will have no impact on the disfranchised.

The discussion paper also states that referenda are consistent with reaching the objectives of our government: increased accountability, a reinvigorated economy and re-established credibility of government institutions. I have already stated that I can't understand how it will improve accountability to any marked degree. While I have to celebrate the government's goal of reinvigorating Ontario's economy, I'm at a complete loss when it comes to establishing the relationship between referenda and economic reinvigoration.

1040

Mr Bud Wildman (Algoma): In California there are firms that contract to get signatures, so that would help the economy.

Mr Walker: It would be a wonderful thing if you're in the publishing or advertising business, but as far as the general economy is concerned, no.

I also wonder what the government has in mind for referenda when it states that they will help meet the goal of re-establishing credibility of government institutions. How something used as infrequently as referenda could do that is a puzzle to me. Perhaps the idea that the government is listening to the results of a referendum somehow adds legitimacy and credibility to that government. I have serious doubts. Credibility will not result from referenda; credibility comes from integrity and honesty, begin up front with the electorate, stating what you intend to do and then doing it. In short, it comes from sticking to your principles.

Further possibilities are voiced in the discussion paper. Somehow we are to believe that referenda will reduce the impact of special-interest groups. Referenda have nothing to do with reducing their power. That can only be done by the deliberate decision not to listen to them or not to give their positions any more credence than the position voiced by one individual in a letter to his or her own MPP. In fact, special-interest groups, if referenda are not carefully defined, will actually gain power, as they have the ear of the media and would thus be in a position to have greater influence on the outcome of a referendum.

Given that possibility, it is doubtful that referenda could ever reduce societal frictions or bring about unity. Even the author of the paper relates, "Controversial questions will lead to a high voter turnout." For "controversial," we must really read "emotional." Emotional questions will without fail result in a high turnout. Will they result in unity or reduced friction or somehow make the losers less dedicated or vociferous in their opposition? If that was the case, then Canada as a nation and Quebec as a province would be the very model of harmony and tranquility.

No matter what anyone tries to imply, referenda in and of themselves will not improve the economy, make the disfranchised happy with what they still may see as bad government, somehow reduce the roles of special interest groups or even eliminate the elements of uncertainty attributed to elections in the paper. Referenda are not an answer; they are merely a process or a tool. We must avoid the plight of the man who holds the nail in his hand, who sees every tool as a hammer. We must identify precisely what kind of tool a referendum is.

When the government is faced with a tough question and is seeking an answer, referendum is rarely the right tool for the job. It is the principles a government subscribes to that will provide the answer. If the government is consistent in its approach to all issues, it will likely meet with the approval of the majority that elected it and likely increase that government's credibility at the same time. Yes, I know majorities don't always elect the governments, but that's back to electoral reform, and we'll leave that.

I must applaud the concept of governing that was put forward in the document. It stated, "Individuals should decide their futures," and, "The function of government should be to serve and facilitate those aspirations, not to rule or constrain them." It goes on to provide that

"individuals may pursue their own economic and lifestyle goals." That's absolutely right. Those are the principles that I referred to earlier and those are the principles that must provide the answer to most of the questions faced by our government today. But it is these same principles that must answer the questions we have about the use of referenda.

In 1984, when the Freedom Party was founded, our platform read: "The purpose of government is to protect your freedom of choice, not to restrict it." That message has remained constant throughout our history. I've got to say I'm delighted to hear it echoed in the discussion paper's identification of what can make Ontario's government better and more responsible.

But knowing the proper purpose of government, we're now aware of one last and perhaps the most important limitation on referenda: They cannot be a tool used to contradict the purpose of government that we have agreed upon. They cannot be a tool used to rule or constrain the aspirations, activities or lifestyles of individuals. Please note that with this statement I recognize that minority groups are composed of individuals. Referenda are not meant to impose the will of the majority on minorities either.

What purpose is left for referenda? It was stated quite eloquently at the bottom of page 5 of the discussion paper, "Referenda are but one way of putting taxpayers back in control of their government." That statement says a great deal. Sadly and correctly, it implies that we have lost control of our governments and need to regain control. But on the plus side, it says that the taxpayer must be put back in control of their government. I must emphasize that. It doesn't state that taxpayers need to get in control of one another; it states explicitly that taxpayers need to get in control of their government.

It must be emphasized that the statement recognizes that referenda are not a tool to be used by government to control taxpayers; they are just the opposite. That is the sole purpose of a referendum: to allow taxpayers to rule or constrain their government. In addition to that, the principles we discussed tell us that they are not a tool to allow the majority to rule or constrain any minority or individual.

You'll notice I make no great claims for that simple definition — no goal of economic revitalization, reducing the power of interest groups or even improving public participation. I won't even go so far as to say that it will put the taxpayer back in control of their government. Referenda are too limited in purpose to achieve that goal, but properly defined, they are a step in the right direction.

Referenda simply exist to transfer power in certain specific matters from the government to the taxpayer, and those specific matters I'll leave to Mr Metz. It takes a great deal of courage on the part of any government to willingly give up the power it now holds and turn it over to the electorate. I must salute the initiative, because rarely does a government consciously embark on such a course.

This process has led us to a precise definition of "referenda." A referendum is a tool to be used by the electorate to control or constrain their government, and, I must add, not to control or constrain one another. That

definition eliminates many of the risks inherent in referenda. It eliminates the frivolous use of referenda, eliminates their misuse and eliminates the need for many of the questions that were posed at the end of the discussion paper itself. Most importantly, by defining "referenda" and removing the negative aspects from them, we allow them to be the valuable tool we know they are.

I ask you to keep this definition — a tool to be used by the electorate to control or constrain their government, and only their government — not at the back of your mind but at the forefront. It is a yardstick for you to use, and use it you must. Please use it to measure the submissions you have already heard, those that you will hear today, the inevitable media and interest group fallout, and also use it to measure the comments of those working with you in these hearings in the subsequent discussions. I'll ask you, just for practice, to use it for the further comments of Mr Metz.

Mr Robert Metz: Given the discussion paper's explicit statement that "today's Ontario government is firmly committed to the referendum and its use," it certainly did not seem necessary for us to present this committee with arguments to encourage the government to adopt referenda; but rather to establish some clear parameters under which we believe referenda would be both practical and principled.

We certainly do agree that there is a place for referenda, a very necessary place, and have in the past explicitly expressed our full support for binding referenda in two specific fundamental areas of political concern: constitutional amendment and issues of taxation.

During the 1995 Ontario provincial election, Freedom Party's platform included the advocacy of a taxpayer protection act which incorporated maximum tax limits, a flat rate tax system, balanced budget legislation and a binding referendum on tax increases.

In 1992, Freedom Party regional vice-president William Frampton addressed the special joint committee on the process for amending the Constitution of Canada and proposed that in addition to the approval of three quarters of Canada's provincial governments, any constitutional amendments be subject to a referendum procedure in order to give the people of Canada the final verdict on constitutional change.

However, he cautioned: "Safeguards must be in place to ensure that amendments enjoy the support of the great majority of Canadian citizens. It must not be possible for a minority or even a bare majority to impose them upon the entire country. It is quite possible for a minority of adult Canadians to be a majority of those voting. For this reason, the criteria for ratification should be based on the number of citizens eligible to cast ballots."

This is a principle we continue to apply to our support of referenda, namely, that the number of eligible voters be the basis of any threshold requirement to legitimize any referendum result.

You have already heard that Freedom Party believes that the purpose of government is to protect individual freedom of choice and not to restrict it. I stress this point because it is against this standard that all Freedom Party policies are tested. Where any policy may potentially

violate individual freedom of choice, our party constitution demands that we must, as a matter of principle, reject such a policy.

Therefore, in considering referenda, our prime directive demands that we ensure that any kind of referenda we would support does not and potentially cannot have an outcome that would in any way directly violate the fundamental rights and freedoms of any individuals in our society.

As a consequence, Freedom Party would not, for example, entertain any referenda with respect to issues like conscription, abortion, rent control, Sunday shopping laws, prohibition or censorship, among an endless list of possible issues that could be put to referenda.

1050

We believe that referenda are applicable to two fundamental areas only: constitutional amendment and tax increases. While this may make it appear that our endorsement of referenda is severely restricted and might make referenda inconsequential, bear in mind that taxation issues may encompass a great many possibilities.

For example, right now in London, Ontario, where we are headquartered, the municipal government there has already committed itself to making a bid to host the 2001 Canada Summer Games at a cost somewhere between \$2 million and \$9 million to the taxpayers of the city. The city is conducting its own informal "referendum" by asking citizens to sign a petition supporting the games. But the petition does not mention the potential cost and has not been directed towards those responsible for the costs, the affected taxpayers themselves.

Among other places, this Canada Games petition has been circulated to students in high schools, who of course have no reason not to sign it as they would not be directly responsible for the costs associated with the proposal.

Mr Wildman: They are citizens.

Mr Metz: Yes, they are, but they are not directly responsible for the cost.

Moreover, the city is conducting its poll only after it has already committed itself to the bid process, and is merely attempting to use the results of that petition as justification for its action. Rejecting the use of a referendum to address the issue, a London councillor only yesterday publicly stated, "If we had to go to the public on every issue, nothing would get done."

My point in mentioning all of this is to illustrate both how referenda might be seriously abused and how some politicians may view a referendum as a serious obstacle to their objectives, and therefore may use any means at their disposal to avoid a referendum altogether or to affect the manner in which a referendum is conducted.

A legitimate referendum procedure designed to objectively measure the consent of taxpayers who would be footing the cost of the Canada Games in London would be (a) to direct it only to those taxpayers who would have to bear the cost; (b) to conduct the referendum before any commitments have been made; and (c) to word the question in a manner that expresses the taxation aspect of the issue because this is the only direct manner in which the citizen is affected.

This brings us to the potential wording of referendum questions. Framing the question is all-important. Consider, for example, a hypothetical generic proposal, "The government should not go ahead with an increase in taxes." Under this wording, the rejection of the tax increase would have to be a Yes vote, whereas a No would imply that the government could go ahead with its tax increase. This is both confusing and manipulative.

It is our view that all questions should be stated simply, geared to a binary Yes or No response, and with the Yes vote representing the option that initiates the action that would be pursued by the referendum.

Additionally, just as we believe all referenda should be a statutory requirement, we also believe the wording of questions should be prescribed in statute law. This will ensure that agreement has been reached on the wording of any questions well in advance of interests lining up on each side of an issue in the hopes of affecting the framing of the question.

The government's discussion paper raises the issue of how an issue might be promoted or debated during a referendum period. Questions relating to campaign spending or advertising and the necessity of rules governing such activity are raised on page 42 of that document.

Freedom Party opposes any bans, controls or regulation of advocacy groups or advertising, including political parties. However justified, these measures all effectively amount to a restriction of freedom of speech, the fundamental freedom upon which any free election depends.

Already there is too much regulation and control of the political process in Ontario. For example, the Commission on Elections Finances, which regulates the finances of officially registered political parties in Ontario, effectively uses this regulation as a means to control the activity of political parties and to place independent candidates on an unequal playing field with the registered parties. Our own experience with the elections finances commission is not reassuring, if one is entertaining the possibility of this, or a similar commission, regulating referenda.

The executive director of the finances commission plainly informed me at a meeting last year with the alternative parties that Freedom Party would not be allowed, for example, to issue official tax receipts for any contributions we might raise to facilitate our ongoing information campaign to disempower Ontario's Human Rights Commission, but that we would be permitted to issue official tax receipts if we wanted to raise money to campaign for gender equality in the Legislature. Unfortunately, we find the latter offensive and would never violate our party principles to pursue such an undignified egalitarian objective. However, this places us at a distinct disadvantage with respect to our political competitors who can offer tax credits to support their issues but we are not permitted to do the same.

This does not speak well of our democratic process. If this is the type of regulation and control to which referenda might be subject, then all is lost and the question of whether we have referenda or not becomes irrelevant because we will still end up with the same kind of government.

You will note that we have not endorsed government- or citizen-initiated referenda. That is because we believe there is still room for the traditional election process and for representative democracy. To that end, we have proposed the single transferable vote as the ideal means with which to achieve genuine proportionate public representation through elected officials. I would be happy to forward our proposal to anyone who is interested.

We believe that issue initiatives should be undertaken by politicians, by political parties or by citizens who should have every right to become candidates for election through the traditional political process. Unfortunately, independent candidates are severely handicapped and intimidated by election financing regulations, which only work to further entrench the party system and to create a disproportionate system of representation.

It is in many ways a tragedy that we have come to the point of having to resort to referenda as a means of controlling our governments. I would dispute the discussion paper's suggestion that, "The authors of the British North America Act could not have foreseen a nation-state as expansive as the one that exists today," or the "power wielded by interest groups." My understanding of history tells me that oppressive government and power-wielding interest groups were exactly what travelers to the new world were trying to escape from in the old world. Interest groups, in and of themselves, are not an issue. The relevant issue is the politicians who bow to interest groups, and the governments that finance interest groups. Government is always the issue.

Whether referenda can directly or indirectly affect these concerns remains to be seen. Democratic processes have often been a source of oppression and that is why we have emphasized our cautions to the referendum process at this hearing today. Nevertheless, we fully endorse referenda subject to the provisions we have outlined in our presentation.

We also applaud this government's courage in addressing this issue and for preparing a discussion paper that seems to have touched upon a remarkably wide range of alternatives and very relevant considerations, whether or not one is in agreement with any of the particulars.

We have concluded our response to the government's discussion paper with specific responses to each of the 21 questions posed on pages 41 to 44. I invite you to peruse these at your convenience, and take this opportunity to thank you for hearing us out and for this occasion to present you with our viewpoints.

The Chair: We have time for one brief question from each caucus, and I'll start with the Liberal caucus.

Mr Rick Bartolucci (Sudbury): Thank you for your presentation. You're suggesting that referenda only be held for constitutional issues and those issues which increase taxes, or propose tax increases. Is that correct?

Mr Metz: Correct.

Mr Bartolucci: And you propose that at both the municipal and the provincial or federal levels.

Mr Metz: Sure.

Mr Bartolucci: You say in your presentation that it should be only directed to those taxpayers who have to bear the cost or that it has some impact upon. How then could you possibly conduct a referendum for the \$2 user

fee for senior citizens? How would you construct it so that it's a valid referendum?

Mr Metz: A user fee is not a tax, despite many assertions —

Mr Wildman: The Premier says it is.

Mr Metz: He may say so, but it's not. A tax is a non-user fee, so that's the only difference. We do believe in user fees. A user fee would not be anything that would ever be subject to a referendum. It's like putting what the price of groceries should be to a referendum, or putting what the price of a car should be, or medicine, or anything. These are economic issues, separate from government.

Mr Bartolucci: If we look back on page 4 of your presentation, if you suggest that a user fee is not a tax, are you not in fact denying citizens the ability to rule or constrain their government? If a government increases the user fee for an individual, that individual may define that as a tax.

Mr Metz: No, the user fee is only paid if the person uses the service, whereas under taxation the person still pays even if he doesn't use the service. Or to look at it from the other point of view, the taxpayer is forced to pay for a service someone else is using and he is not. That's imposing upon him.

1100

The Chair: I've got to turn now to the New Democrats.

Mr Wildman: I found your presentation to be interesting. Your comment about interest groups I think was correct in that some historians would argue that the CPR was built in Canada because of monied interest groups in Montreal, largely. So interest groups are hardly new in our political process. I think the CPR was a good thing but it also benefitted those interest groups a great deal, particularly the banks.

Mr Marcel Beaubien (Lambton): We had more then.

Mr Wildman: Yes, we did. Those banks have used a lot of that revenue to concentrate political power throughout our history — political and economic power.

I'm a little bit concerned, though, about your views about citizenship in this country.

Mr Metz: Which views are those?

Mr Wildman: Well, your view seems to be that referenda should be used on constitutional issues, which I agree with. Obviously, the fundamental law of the country affects all citizens, so therefore all citizens should have a say.

Mr Metz: Right.

Mr Wildman: But then you say on taxes that it should be directed at those who are directly affected, and by that you mean, I think, people who pay the taxes.

Mr Metz: Correct.

Mr Wildman: But surely taxation policy affects everyone, not just those who pay the taxes.

Mr Metz: It may affect everyone indirectly. Any good or service you buy, even if the tax is not shown in the price of it, will include some taxes and indirectly affects the purchaser of that product. If we start being fuzzy with our lines at where a responsibility or a tax is actually being paid, we'll have an endless argument over who should be responsible for what.

Mr Wildman: I think we all should be.

Mr Metz: Well, you see, we believe in individual responsibility, not in collective responsibility.

Mr Wildman: I believe in both.

Mr Metz: We feel the latter is a contradiction of the first and results in no responsibility at all.

Mr Wildman: It seems to me if we decide not to collect taxes, that may have impacts that affect everyone.

Mr Metz: Certainly it would.

Mr Wildman: Okay. So if we decide not to collect the tax and therefore we can't build a road, and not just those taxpayers but others will be therefore affected, or not to build a school and so on —

Mr Metz: Again, roads should be paid for through what we might call user fees, although they might still be called taxes. There's nothing wrong with charging a road user fee through the pump where you get your gas — it could be a tax — or through licensing, but it shouldn't be charged to people who aren't directly using that service. The cost will be borne —

Mr Wildman: By society.

The Chair: Thank you very much, Mr Wildman. I've got to turn now to the government caucus.

Mr John Hastings (Etobicoke-Rexdale): Mr Metz, Mr Walker, I'd like to thank you for articulating a very well-thought-out, philosophically focused, consistent type of presentation in terms of applying your principles to this item. It's probably one of the best in that respect.

I'd like to get your thinking on how citizen-initiated referenda could be applied to your narrow focus of taxation issues. For example, do you see ever the possibility that a citizen-initiated referendum could come about where they want to designate a tax for a specific purpose? I think that has occurred actually in Rossland, BC, in their type of referenda-focussed approach to local government.

Mr Metz: I've never heard of anyone wanting to pay another tax. If that case exists it certainly would be an unique circumstance. The kind of proposal you're thinking of, I can't think of any circumstance where I'd want to go out of my way and propose a tax.

Mr Hastings: What about in the set of circumstances where a municipal government council — where you have local referenda as a general operating principle in that governmental culture — failed, let's say, on at least two occasions to get a money bylaw through for sewage treatment in an expansion of their community? I haven't fleshed out all the circumstances, but now you have consequences arising from that failure. Some citizens may see the necessity of protecting public health or what have you and would have the capacity to initiate a referendum on that specific issue to deal with raising enough money for sewage treatment for the expansion of that community.

Mr Walker: I'd have to address that by saying it raises another concern in that it makes it very difficult, because where do you draw the line as to where a citizen-initiated referendum can come from? It could be called on anything. The concern is, you bring up a very serious issue that those people should obviously be going to their council and quite seriously at the next election should be removing some of those people from council.

But I don't know that you can leave it open to have referenda initiated by the citizenship on any particular topic, even something as gross as if an MP is elected on, let's call it the redneck ticket, they're in office, they learn something and they change. Have they betrayed their constituents? The change may be for the better. I don't know how you can have citizen-initiated referenda or recall that will address that issue.

The Chair: Thank you very much, Mr Metz and Mr Walker, for your presentation. We certainly appreciate your input and thank you for coming in today.

LONDON-MIDDLESEX TAXPAYERS' COALITION

The Chair: Our next witness today is Mr Jim Montag for the London-Middlesex Taxpayers' Coalition.

Mr Jim Montag: Is that "witness" or "presenter"?

The Chair: You're not sworn in. You're a presenter.

Mr Montag: Good morning. I thank you all for the opportunity to be here. I'm with the London-Middlesex Taxpayers' Coalition.

I'm going to make a number of comments about government in Ontario and Canada. None of these comments is directed to our present Ontario government.

Before the last provincial election, Premier Harris promised to bring in a taxpayer protection act. Not only is he doing so, but he has expanded the concept to include referenda, initiative and recall. This is indeed a most refreshing change from the governments that we have become accustomed to in Canada and Ontario for many years. We not only have a party in power that keeps its election promises, but also shows an interest in listening to the people. Our presence here today is further proof of the sincerity of this government.

I have always admired the United States of America's concept of democracy: government of the people, by the people, and for the people. Somehow we in Canada have lost the democratic principles necessary and essential for a fair, good and honest government.

Our elected MPs and preceding MPPs do not listen to their constituents, they listen to their leader. They do not vote for their constituents, they vote the party line. They do not speak for their constituents, they speak only to defend their party's position. They do not represent their constituents, they represent their party only. Once elected, any resemblance to democracy in their actions disappears.

We are dangerously treading a path towards oppressive dictatorship. If the present trend continues, the ultimate and only result will be the destruction of our country.

In a debate a few years ago, an elected politician said that referenda was mob rule. I think he very much regretted his foolish remark after hearing my response.

Many of the MPs, MPPs and other elected politicians that I have spoken to in the past do not have any understanding or appreciation of even the most basic tenets of democracy. These are usually very well-educated people with many and various university degrees to their credit. How they could possibly have missed this knowledge is beyond my comprehension.

Not being the beneficiary of this level of education has not prevented me from knowing, understanding and

admiring true democracy. I always thought the lack of a university education was a deficit, but now I'm finding that the lack could be a benefit. I have not been led down any false paths and have not been blinded to the truth.

1110

Maybe we should follow the examples of our community colleges and universities for improperly and undereducated new students and demand remedial courses in democracy and democratic principles for all newly elected members of government.

To me it appears that any resemblance to democracy shown by past governments was purely accidental. At long last we have a government here in Ontario that is heading in the proper direction.

I fully support the concepts of referenda, initiative and recall. There is only one form of referenda, and that is binding referenda. Anything else is a plebiscite. By initiative, I mean all aspects of initiative: government-sponsored initiatives, opposition-sponsored initiatives and private-citizen-sponsored initiatives. The concept of recall is basic, and I will not elaborate.

The referendum mechanism is not an abrogation of the government's responsibility to govern, but rather an opportunity to govern more responsibly. Presently, due to the apathy of most people, the only voices the government hears are those of special interest groups, and only after an unpopular decision do the elected representatives hear from the citizens.

Referenda will not only permit the ordinary citizen to be heard, but will instill a sense of pride in being part of the decision-making process, will dispel general apathy and make people much more aware of and appreciative of their system of government.

Where referenda, initiative and recall are part of the governing process, the citizens feel so strongly about it that no one would dare try to take it away or weaken it. Switzerland, with 400 years of referenda, initiative and recall, despite having three official languages along with three different cultures and being one of the most heavily armed populations in the world, has the enviable record of living at peace with themselves and the rest of the world. Surely their system of referenda, initiative and recall-dominated governance must be credited for their record of peaceful coexistence and solidarity.

How many of you know of a Swiss national who has emigrated to Canada? I have not heard of any. With their system of government, I can readily understand why none of their citizens would want to leave. Switzerland is not a member of the United Nations; however, many of the UN-sponsored peace initiatives are held in Geneva. Obviously other countries have a great deal of respect for the Swiss and their government.

Eight out of 10 provinces have some form of referenda, initiative and recall. We are long overdue for a similar system in Ontario and in Canada.

There are many slightly different versions of referenda, initiative and recall and many problems to be overcome before installation into government of these systems. This should only be handled by a constituent assembly, an assembly of ordinary, non-elected citizens from all walks of life. A constituent assembly would be the only truly

democratic method of arriving at the implementation of such a system of governance.

Referenda should be allowed on an unrestricted range of public issues. A referendum majority should consist of 50% of the voters plus one. Referenda should be held in conjunction with all federal, provincial and municipal elections. Cost should not be an issue for referenda necessary between elections but should be kept at a minimum, using any method allowing easy participation by all citizens.

Initiative signature requirements should be somewhere between 5% and 10% of government members, opposition members or citizens sponsoring the initiative; not under 5% to prevent frivolity and not over 10% to present undue difficulty. This would effectively suppress and stifle the present disproportionate influence of special interest groups and their special considerations.

Many times I have referred to special interest groups, of which the London-Middlesex Taxpayers' Coalition is one. But unlike other true special interest groups, who never go away and whose demands are relentless, our group will expire and fade away with the advent of truly educated politicians within our political system, where the words "integrity," "principle" and "honesty" are clearly understood and practised and will result in a truly democratic society.

In closing this presentation, I would like to reaffirm my wholehearted support of Mr Harris and his party for their efforts in this direction.

The Chair: Thank you very much, Mr Montag. We have a little more time for questions in this round, and I'll start with the New Democrats.

Mr Wildman: You point to Switzerland. We had a presentation by a Reform member of Parliament from North Vancouver, Mr White, yesterday. He was a proponent of referenda who informed us that in Switzerland the turnout for the referenda, which they hold very often, averages around 15% to 18% of the electorate. That indicates that not too many people in Switzerland actually take part.

One of the arguments that is put forward in favour of referenda as a form of direct democracy is that we have low turnouts for our general elections because people are cynical and feel that they don't really have any control of government and it doesn't really make any difference how they vote. So they don't turn out. Yet we have turnouts of between 64% and 70% in most general elections. I don't know what the turnouts are in general elections in Switzerland, I'm sorry. I'm going on the information Mr White gave us, but he said it was only about 15% to 18% who participated in referenda. That would indicate an even greater level of cynicism, wouldn't it?

Mr Montag: To me, that would indicate a greater level of happiness with their present government, a greater level of confidence in the present government.

Mr Wildman: It would also indicate that there isn't much of a demand for referenda there.

Mr Montag: I think there's quite a demand in Switzerland.

Mr Wildman: Only 15% are participating.

Mr Montag: In California they have had as many as 107 referendum questions on the ballot and they get a very high turnout there.

Mr Wildman: They're usually related to their elections. It's added to the ballot. Fewer people vote on the referendum questions than vote for the candidates at the top of their ballot.

Mr Montag: But their questions usually relate to taxpayer issues out there.

Mr Wildman: I understand also you said, and correct me if I'm wrong, that you thought that any move to institute such a form of governance should be done by a constituent assembly. Therefore, you don't support this process.

Mr Montag: I would like to keep all political parties out of a process like this. This is something that affects all of the citizens of this country, and this is what should be decided by plain, ordinary people in this country.

Mr Wildman: I understand. You said that it should be a constituent assembly. I understand your position. Therefore, you can't be in favour of this process since it is not a constituent assembly.

Mr Montag: In a way, I am in favour of this process. That's why I'm here today.

Mr Wildman: That's why I'm asking you, because it seems contradictory.

Mr Montag: Sometimes there may appear to be a paradox in some statements that a person can make, but I think you can understand too that you can't really be 100% always in one direction and not in favour of something else.

Mr Wildman: So things are not always yes or no. Sometimes they're more complex.

Mr Montag: Yes, and I point that out in here.

Mr Wildman: That's one of the problems with a referendum question, isn't it?

Mr Montag: It can be very complex, yes.

Mr Wildman: And you only can answer yes or no.

Mr Montag: No. The referendum process can be very complex, but I believe referendum votes should be very simple, yes or no. No maybes allowed in here; either you agree with it or you disagree with it.

Mr Wildman: Even if it may be complex and there may be some things you agree with and some you disagree with.

Mr Montag: Well, that would be two questions.

Mr Wildman: I see.

Mr Montag: You could have two separate votes.

Mr Wildman: You'd put it down into separate votes. So you could have a long list of questions in a referendum.

Mr Montag: California had 107, I believe, in the second-last election.

Mr Wildman: You would consider that to be a good thing.

Mr Montag: I would consider that better than what we have here. It might not be perfect there. I don't think any —

Mr Wildman: I don't think any form of government is perfect.

Mr Montag: It's never perfect anywhere. You just try to do the best you can.

Mr Wildman: Winston Churchill once said representative parliamentary democracy is the worst form of government there is, except for all the others.

Mr Montag: Yes, I've read that. That was a good comment.

Mr Wildman: Referenda would be one of the others.

Mr Montag: No. I think referenda would be part of a democratic government.

Mr Wildman: He was talking about parliamentary democracy, of which referenda is not normally a part, historically. It can be.

1120

Mr Montag: It can be here because an opposition party could initiate a referendum, or the government itself could initiate a referendum. You're not necessarily, in the referendum process, eliminating the government from it, not at all. They could be very much a part of it and they could initiate it, and the opposition could initiate a referendum. This would be very good, because the party in power never is always right all the time.

Mr Wildman: Obviously, and neither is the opposition. It was suggested by some other presenters that we should only have referenda on specific types of questions, one on constitutional issues and many others have also said on taxation increases. Some have said we should have them on anything, but many have said we should only have them on those two kinds of questions. Your view would be that we could have referendum questions on anything that any citizen wished to initiate if he or she could get the required number of signatures.

Mr Montag: I would favour a very broad range of permissible questions, but not a question that would take away any right or freedom of any group or individual or anybody. There would have to be limitations on some of these questions. You couldn't say, all of a sudden, we're going to discriminate against this class of people. No, no.

Mr Wildman: If there were a referendum on tax increases — the Premier, prior to being elected Premier, made a pledge that there would not be any tax increases unless there were referenda — is it your view that only the taxpayers paying those taxes should be able to vote in a referendum, or should all citizens be able to vote?

Mr Montag: All eligible citizens, all people of proper age, yes, just like a general election. You use your general election roll and that's who votes.

Mr Wildman: So you would disagree with the presenters previous to this.

Mr Montag: In some respects I do disagree with them.

Mr Beaubien: Good morning, Mr Montag. On page 3 of your presentation you mention that referenda will not only permit the ordinary citizen to be heard but it will give him a sense of pride in being part of the decision-making process. Would I be correct in assuming that you believe in individual rights?

Mr Montag: Yes.

Mr Beaubien: The previous presenters believe that they advocate the repealing of Bill 79, which is the employment equity law, Bill 40, the labour legislation, and Bill 8, which is the French services act. If that was your position, and I'm making an assumption here — but let's say this question were to be posed to the taxpayers of the province of Ontario. I have two questions. Ques-

tion one would be, who would word and how would you word the ballot question and, two, who should have the final say on how that question is posed to the taxpayers?

Mr Montag: That is one of the problems, the final question. That would have to be well thought out. It couldn't be the party in power. It may have to be a committee like this of all parties that would pose the final wording of the question. We have seen in Quebec where the wording can be very confusing, and I would not like to see that in any referendum process. So I think there would have to be a multiparty committee similar to this committee here to set the final wording.

I didn't quite understand your first one.

Mr Beaubien: How would you word the question?

Mr Montag: I would like to see them word it very simply to be very clearly understood. Why complicate things with a lot of language that people don't understand or a lot of innuendo they are not aware of? Just make it very simple. You know, the old army policy: Keep it simple.

Mr Dave Boushy (Sarnia): I'm not sure I disagree. I think I more likely agree with most of what you said. You expressed an opinion that a referendum should be binding on the government.

Mr Montag: All referenda are binding. Anything that is not binding is not a referendum.

Mr Boushy: As you know, public opinion changes on any issue. If an issue is voted in by a Yes vote this year, and two years down the road the government of the day realizes that public opinion has turned around, do you still feel that it should enact legislation, although public opinion is against it?

Mr Montag: I don't think things can change that quickly, but I certainly agree with you —

Mr Boushy: We have changed government almost every four years for the last 10, 15 years.

Mr Montag: I certainly with you that things will change, and what you must do is have another referendum if the situation has changed. The government should be of the people, by the people, for the people. If you see the majority of the people out there want one thing and then five years later they want something else, they should have the right to have that. If that calls for another referendum ballot, they should have that right to have that ballot. I agree, people do change, and it might sound confusing sometimes.

Mr Boushy: So are you in favour of having a referendum on one single issue almost every year?

Mr Montag: No, not on one single issue almost every year. What issue would you be suggesting?

Mr Boushy: That's a general question.

Mr Montag: Mainly your referendums will be held at election time. You can have many questions on the ballot, both federal, provincial and municipal. Then only if there was a real need that was a very pressing thing, you would have another referendum in between elections, a major tax increase or something like that. But there are many things that are not really major questions. Like California, with 107 questions down there, you could take 90 of them and they were not important or critical at all, but some of them were. You would have to have a balance there, and if you decided to have one in between elections, you would have one in between elections.

But I don't think people would change that quickly. Governments might, and government opinion certainly would change with a different party in power, but the people are the same.

Mr Hastings: Mr Montag, would you favour a specific piece of legislation framing the referenda issues, questions, thresholds, principles, types of issues, called something like an Ontario referenda and initiatives act? It could have a different name. A specific piece of legislation that would set out the ball game rules for all intents and purposes so we'd know where we were going?

Mr Montag: Yes, I very much would be in favour of that. I think that's almost mandatory to have that.

Mr Bartolucci: Thank you, Mr Montag, for your presentation. Just a couple of questions, and I say this being friendly; I don't want to be argumentative. "Referenda should be allowed on an unrestricted range of public issues." This is what you said. Yet in answer to Mr Boushy, you said that shouldn't be the case. What is it? Should it be on a broad range of public issues or not?

Mr Montag: A very broad range, and you might say unrestricted, keeping in mind the rights, the freedoms of people. You cannot have a referendum to discriminate against somebody or anything like that. I did not mean to say it should be that unrestricted. It must be within the law. The question must be legal and lawful.

Mr Bartolucci: Should they be only restricted then to constitutional issues?

Mr Montag: Oh, no. No, I believe there should be a broad range of subjects: constitutional, taxation and —

Mr Bartolucci: All issues of taxation should be the subject of a referendum?

Mr Montag: Any major tax increases should be subject to a referendum. I wouldn't want to see a referendum vote if you're going to increase the gasoline tax by a cent a litre to provide a highway across Ontario. That's not a question that I think should be on a referendum ballot, but if you want a 5% income tax increase, I certainly think that should be there.

Mr Bartolucci: You know that the government instituted the Health Services Restructuring Commission. It affects health care throughout the province of Ontario. I would think that's a major public issue.

Mr Montag: Yes.

Mr Bartolucci: Would you suggest then before that restructuring commission took place that there be a public referendum?

Mr Montag: On health care services? Yes. I would very much like to see that.

Mr Bartolucci: On the implementation of a Health Services Restructuring Commission, because it's going to affect health care services?

Mr Montag: Yes.

Mr Bartolucci: Before Mike Harris was elected, he suggested and he stated publicly — and I know that you're involved with the taxpayers' coalition, so obviously you agree with much of what Mr Harris said — that any user fee was a tax increase. Do you still agree with him?

Mr Montag: Basically a user fee is a tax increase, and personally, I'm in favour of user fees.

1130

Mr Bartolucci: You have every right to be in favour of them, as someone who opposes them has every right, because that's our democracy. But let's carry through your rationale, because it is important to this presentation. If it is a broad public issue, then you're suggesting that too should be a part of a referendum.

Mr Montag: Yes, it should. With user fees that would be a very important question on the medical issue: "Are you in favour of this or not?" I would be in favour of user fees, but if 50% plus one people said, "No, we're not in favour of that," I would very much go along with their decision and respect their decision.

Mr Bartolucci: You know that Mike Harris is not suggesting that in this discussion paper.

Mr Montag: A user fee?

Mr Bartolucci: No, that we go to the public for those issues in the form of a referendum.

Mr Montag: No, that hasn't been specifically mentioned, but this is the type of thing that should be subject to a referendum. The medical question here is very complex, and we have a serious problem in Ontario funding this. Something has to be done in the very near future. I think a question like that is very important because it's very much related to taxation. They should ask people: "What do you want? What type of health care do you want? Do you want a two-tier system? Do you want a one-tier system? Do you want to continue with this system of total universality, no user fee?" With the thing that just came in recently, I'm subject to user fees, the \$100 on that and everything; I have no complaint with that at all.

Mr Bartolucci: Others do, obviously.

Mr Montag: Yes.

Mr Bartolucci: You're suggesting that before the government did that, they should have gone to the people in the form of a referendum?

Mr Montag: Yes. I think that would have been a good question to have on a referendum ballot.

Mr Bartolucci: Just for your information, because I think it is important, Mr Bailie, the chief elections officer, indicated that for every referendum, if it's held individually, it's a \$40-million price tag. That's his statement. Do you agree that for every referendum at a cost of \$40 million, it's worthwhile?

Mr Montag: Forty million dollars would be an individual question by itself. I believe we should have many referendums, but in an economically effective manner, like putting them on to an election ballot or having two or three or four questions in between an election — any method that is economically feasible that provides participation by all of the citizens. You don't make it difficult for somebody in a remote area of the country to get to a polling booth. They have the same right to vote as we do. Whichever method, whether it's electronic or whatever, that is a reliable system and can be implemented, I would agree with that.

I don't like to put a cost on referendums or freedom, but \$40 million is a very small cost if you're going to have a country break up or if things go bad. The cost is going to be much worse then. Or if the country goes bankrupt or world bankers say, "Sorry, no more money,

you guys are broke up there in Canada," that would be a much more severe cost.

Mr Bartolucci: I don't think anyone would argue with that, with the exception that if you allow for an unrestricted range of broad public issues, can you not see how a particular group, a very powerful group or a particular government, not necessarily this government or any government — that it could be misused? Do you not see that there is that opportunity?

Mr Montag: If it's drafted properly, I don't see much of a possibility for misuse. After all, Switzerland has had this for 400 years and they have been a very solid, stable country for 400 years. That's a lot more than we can say for our own country here.

Mr Bartolucci: A final question: Should there be a restricted amount of money that proponents of whatever side be allowed to spend during the referendum, and should the amount of money they spend be made public to the general taxpayers of the province?

Mr Montag: If it's their own money they're spending, I would not see a need for any restriction but I would say there should be an accountability.

The Chair: Thank you very much for your presentation, Mr Montag. We appreciate your input.

JOHN HOGG

The Chair: Our next presentation this morning is Mr John Hogg, the Oakville Citizens' Committee on Property Tax Reform. Welcome, Mr Hogg, to the standing committee on the Legislative Assembly. You have about half an hour for your presentation. We look forward to hearing what you have to say.

Mr John Hogg: Good morning, Mr Chairman, members of the committee, ladies and gentlemen. My name is John Hogg. I'm co-chair of the Oakville Citizens' Committee on Property Tax Reform. As our committee has not met over the summer and has not yet discussed this issue, I'll confine my remarks to my own opinion and not those of the Oakville Citizens' Committee on Property Tax Reform.

Thank you for allowing me to offer my opinion on this important issue. Referenda are important and should be used to truly involve the public in the decision-making process of governments.

The paper *Your Ontario, Your Choice* deals with many specific aspects beyond my areas of expertise. However, the general concept of having referenda is to bring the government back to the people. A referendum program needs to be perceived as involving the public in the decision-making process, be easy to accomplish and cost as little as possible.

The number one hurdle facing success of such a program is apathy. Most people just don't have the time required to understand the government's process, and when many votes are cast, they are done so with little understanding of the ramifications. This is not to say that a referendum program should not be pursued — just the opposite. It must overcome the major hurdle of a passive society. Make this exercise in participatory government enjoyable. Make it something people want to do.

In *Your Ontario, Your Choice* it is noted that between 1950 and 1992 there were 95 referenda in North Dakota and only three in Wyoming, suggesting that the threshold amounts of 2% for North Dakota and 15% for Wyoming might be the reason for the difference. Having only this information, I humbly suggest that Wyoming failed, not North Dakota. North Dakota's 25 referenda over 42 years are merely two per year and three in leap years. Surely we can come up with a program where two referenda per year are not an onerous task, especially if done using telephones.

On the issue of who should decide whether a referendum be held, I am of the mind that a committee of citizens and MPPs could be charged with this responsibility. The committee could work with non-voting, on the committee, civil servants to ensure legitimacy of the question etc.

It has been my experience that the more you involve the government in something, the more complicated it becomes. I point your attention to a matter near and dear to my heart: property tax reform. As you all know, there is great debate going on about MVA, AVA, UA, UVA and so many other systems that are available, and which system is better. To that end, the assistant Deputy Minister of Finance wrote in an newsletter, the *Grapevine*, on May 16 comparing the two systems. A quick review by someone who knows the nuances between MVA and AVA will illustrate who's really running the process: It's the bureaucrats. Please try to keep them out, as much as possible, of the referendum program.

Just to illustrate this point further, yesterday my partner and I paid the Ministry of Finance \$63.25 for seven pages of information we needed to appeal a client's assessment. No wonder people feel disfranchised from the process. I don't expect to get the information for nothing, but it was he and I who ended up paying for incompetence.

Having referenda in conjunction with elections may not be advisable because of the confusion that might entail, although there might be significant savings if a traditional ballot is utilized. I believe elections are onerous, and a referendum program need not be. Having them placed on a tax return would not be advisable either because negative votes would likely prevail. Let me assure you that I'm not in a good mood on April 30. Perhaps holding a referendum on the week leading up to July 1 might not be a bad idea. Let's also use technology to its widest and most accessible means.

1140

Voter eligibility was also an issue. The eligibility for municipal elections is facilitated through the Ministry of Finance's Oasys, Ontario assessment system, database. It contains almost 120 fields of information. I am sure, with the property assessment issue under rejuvenation, that adding one logical field to this database indicating eligibility would not be difficult, thereby substantially reducing that cost.

If fund-raising is going to be a factor in referenda, don't allow contributions to be tax deductible. That is one of the problems we now have with political contributions. It ends up allowing political parties to actually dip into public coffers, not something I find very tasteful.

The current government has undertaken, without the mandate, the implementation of actual value assessment, an assessment system with the promise of increased bureaucratic cost and erratic, volatile evaluations. Compared with other systems used around the world, it would appear to be something against the wishes of many. What better issue to use as the first referendum? Page 4 of *Your Ontario, Your Choice* states, "[F]or many years Mike Harris has said that certain questions of public policy — such as those related to constitutional amendments, the expansion of casino gambling in the province, and new provincial taxes — are so fundamental that they should be decided using referenda." I agree with this and I need not remind you that the new municipal or property taxes proposed are actually provincial taxes, a massive, unmandated change which to date has only received cabinet approval.

In conclusion, you have a great opportunity ahead of you which has the potential to bring the government back to the people, which will not be easy but which, if seized with the good intentions of referenda in mind, can only lead to a better democratic system, a system we all cherish.

Mr Hastings: Mr Hogg, thanks for your presentation. I'd like to focus on how you would handle the issue of property tax reform in a referendum question. Would you see the question posed as a negative question or a positive question? I take it, from your remarks, that you're not in favour of either market value assessment or actual value assessment. If that's so, what kind of method of assessment reform would you see posited in the question in order to achieve the broad-based public policy goals of equity, fairness, uniformity, consistency, that sort of stuff?

Mr Hogg: That's a tough question to ask and to have answered in a referendum. However, I would not see it as a negative; I would try to turn it into a positive, possibly something to the extent of, "Are you in favour of value-based assessment systems, which require constant updating and constant review and constant inspection processes, or are you in favour of a size-based system, one which in reality, once completed, doesn't have to be done on a continuous basis?"

Mr Hastings: You see that actual value assessment has a value-based component.

Mr Hogg: There's absolutely no question; "actual value" is right in the name.

Mr Hastings: Do I take it then that you're not totally turned off by actual value assessment as a methodology?

Mr Hogg: No, that's incorrect. I am totally turned off by it.

Mr Hastings: I guess I'm getting off question, then. Some people have come to us and suggested that the phraseology of a question, the way of handling a question, is to simply phrase it such as, "Do you support," and actually name the bill number, the title of the bill etc, if it's linked to taxation issues or to constitutional issues, so that it's very clearly, narrowly focused on that subject matter and not the number of kitchen sinks we had in the 1992 constitutional question that was posed in that federal referendum.

Mr Hogg: The problem with that in my view would be that there are a number of issues that — I'm going back to the Quebec issue. Maybe I shouldn't, but I will anyway. That was that type of question, where it then requires the voter to go out and spend the better part of a day reading some bill and trying to understand the legalese behind it and trying to actually take the time and the energy to find out what the actual bill is. If you could avoid that, that would be a better process, in my opinion, because most people just won't take the time.

Mr Tony Clement (Brampton South): I'm starting to conclude, and I'd like your response to this, that there has to be some solemnity involved in a referendum in the sense that it has to be treated as a serious decision that has to be made by the citizen. The citizen has an obligation. Not every citizen treats this obligation seriously, but at least there should be an implied obligation to educate oneself, just as one should try to educate oneself prior to a general election.

Mr Hogg: Exactly.

Mr Clement: And the solemnity of the occasion should be via not just a kind of public opinion — we don't want to get into a public opinion survey kind of approach to this; we want it to be treated seriously. Part of what we're hearing from people at this committee is you don't have a referendum at the drop of a hat; you don't have a referendum every day as part of answering your voice mail messages. It is a solemn occasion. Am I barking up the right tree here?

Mr Hogg: Yes.

Mr Clement: So that's how you see it as well.

Mr Hogg: Yes, but I don't think it should be reserved as during elections or once every five years or something of that nature. Not today, not with the technology that's available. I don't think that's necessary.

Mr Clement: We can use technology, but it should still be seen as a serious enterprise rather than, "What's your horoscope and how do you feel about this?"

Mr Hogg: Indeed.

Mr Gilles E. Morin (Carleton East): I just wanted to know, would you limit the issues under a referendum? In other words, would you establish parameters? Would you say, "Okay, we'll have referendums only on the Constitution, only on taxes," or would you open the gate to everything?

Mr Hogg: I saw that question. I think it was the first question of the replies in the report. I would rather see it restricted than the other way around, like "not on certain matters" rather than "only on these matters."

Mr Morin: Who would pay for the referendums and who would administer the referendums?

Mr Hogg: The cost I heard just a moment ago was \$40 million for each referendum. I would suggest that this cost, with the use of technology and as things progress, could be substantially reduced.

Mr Wildman: They said down to \$28 million; it could be a bit lower than \$28 million.

Mr Morin: Who would pay for it, the government? Or would it be interest groups; for instance, if it's a question of tax, the Canadian tax coalition or the Canadian tax association? Would it be them who would pay for it?

Mr Hogg: The end beneficiary of this would be the people, so I would presume, in my opinion —

Mr Morin: The government.

Mr Hogg: The government would have to do it, but it could not be something of a light matter.

Mr Morin: I think my colleague Mr Hastings raised a question: Who would prepare the question? Who would decide that it is the right question to be asked, that there is no problem to understand what the issue is? And how would you inform the people about the issue?

Mr Hogg: That again was one of the questions in the paper. I made some notes beside that. I thought a committee of MPPs and citizens could be composed and then, utilizing the services of the civil servants, we could make sure the questions are properly posed and they would go to the people from that point.

Mr Morin: I think it was Mr Beaubien also who mentioned that it's the type of issue really that sometimes transcends politics. Would you see the question prepared by the three parties? Let's take this committee. If a vote was to be taken, the Conservatives would win; they have the majority. How would you arrange it, how could it be discussed, without politics being involved? Do you understand what I'm saying? How would you arrange it in such a way that the three parties get together? We have to establish a system that is not only beneficial for today, but 50 years from now. Governments are never there on a permanent basis. They change. So it's got to be prepared in such a way that it is not used as a political tool. That's the issue, that is the problem, that is the concern that I have.

1150

Mr Hogg: We out in Halton, back in 1993, I believe it was, started the Halton Citizens' Committee on Property Tax Reform — not the Oakville citizens' committee — and that was comprised of three citizens from each of the four municipalities in the region and one councillor from each of the municipalities, without a vote. The councillors did not have a vote; it was only the citizens who were able to vote on resolutions out of the committee. So possibly that could be a way to do it. I might add that you would have no need to hire consultants. I'm sure there are a number of people who would like to belong to a committee such as that, so it would be on a volunteer basis.

Mr Bartolucci: Just a short question. There is no right or wrong answer to this, John; I want to assure you of that. After sitting here for three days, there's such a divergence in thinking about what should be on a referendum etc. In your estimation, what should the threshold be?

Mr Hogg: I've been involved in collecting names on a petition, and that is not an easy task. It requires a lot of hard work or else a very highly motivated executive-type committee that can designate work to other volunteers.

As I mentioned in my presentation, either North Dakota or Wyoming had 2%, one had 15%, and one utilized the system much more than the other. I don't think 2% is unreasonable. We've been able to do that on petitions. It does require a lot of work, so each of the initiating groups would have to do a lot of work just to get the 2%. They'd have to be very motivated to get that completed.

Mr Bartolucci: Do you feel this 2% should be reflective of the geographical locations within the province? Is it important that on any issue, people from northern Ontario have an opportunity to sign the petition, or should it be localized? If it's a southern Ontario "initiative," should it be localized to southern Ontario?

Mr Hogg: Maybe that's where we should get some guidance from the Who Does What committee, because if it becomes an issue that is localized, then possibly it should go to the municipal government. Those are the people who should have the ability to change the system if it's a local issue. If it's a province-wide system, then obviously it would require provincial sanction from right across the province, no matter where you live. I go back to my own dear subject of property tax reform and I look at what's happening in the GTA because of the Golden task force and its recommendations, and then I try to relate to how that's going to affect some moose pasture up in wherever. That's a difficult system to say one system fits all. It's not one system fits all.

Mr Bartolucci: I'm sure you were talking about the moose pastures in Oakville as opposed to the moose pastures in Thessalon.

Mr Hogg: Indeed I am.

Mr Bartolucci: Yeah, right.

Mr Wildman: Thank you. I represent an area that has a lot of moose pastures, so I would like to pursue this, along with the question Mr Hastings raised.

Mr Bartolucci raises a very interesting point. He and I come from part of the province that covers, if you talk about the whole of northern Ontario, 80% of the land mass of this province and only has about 9% of the population. We have a very large percentage of the resources of this province in our part of the province. There is a feeling among some of us when we look at this issue — we become even more worried than we often or perhaps always are about the fact that those of us who live in northern Ontario might be swamped by opinion in southern Ontario with which we might not necessarily agree. One of the characteristics of democratic government is majority rule. Another is protection of the rights of the minority.

I'll use an example. I won't talk about moose; I'll talk about bear. In British Columbia there's an attempt under their legislation right now by an organization that is opposed to bear hunting. I would posit the view that the group is probably an urban group. I don't know that; I'm just guessing. One of the things they have to do in British Columbia is get the percentage — it's a high percentage — from each riding in the province, not just the total number. So they couldn't get almost all of them from Burnaby and Vancouver; they have to go into the interior and into the north and up along the coast, I guess. They have to, because they have to get into every constituency.

Obviously I think the people in Vancouver do have a right to have a say about whether or not there should be bear hunting, but I also think that such a decision is probably going to affect more directly the people who live in the more rural and northern parts of that province, since that's where the bears are. So it seems to me that if you're going to have a situation that requires a certain

threshold percentage of the population or the electorate to initiate a petition, there must be some provision to ensure that rural areas and northern areas must also be canvassed and have names, signatures, before the process can proceed, or inevitably Metropolitan Toronto and Ottawa-Carleton, for instance, would dominate.

Mr Hogg: I guess the question becomes, who is issuing the licence for the bear hunting in BC? Is it the province of BC or is it the municipality or the county?

Mr Wildman: The province.

Mr Hogg: It's the province. Should they be?

Mr Wildman: I think that does not answer my question.

Mr Hogg: I think it does, because that issue in the referendum then becomes a localized issue of bear-hunting in northern BC.

Mr Wildman: But conversely, you're denying the people in Vancouver and Burnaby the right to express an opinion on what is a provincial matter. It's not just a local matter; it's both. It's provincial and local.

Mr Hogg: That's true, but it's more of a local issue. It's going to impact the people in the rural areas more than it would in the urban areas, and obviously the wildlife and the natural resources are of concern to all of us, not just those in the rural areas. That's a difficult question to answer.

Mr Wildman: I think the same applies when you look at questions related to taxes. Obviously, taxes affect taxpayers. But also tax policy affects all citizens, even if they don't pay taxes, because what happens in terms of how much revenue and how it's expended affects everybody.

Mr Hogg: That's right.

Mr Wildman: You indicated that you felt new taxes should be subject to referenda, and you welcomed the fact, I think, that the Premier has indicated that.

Mr Hogg: Yes.

Mr Wildman: When you say "new taxes," by that do you mean increases in taxation that we already have or new types of taxes?

Mr Hogg: I certainly think new types of taxes. If you go from a system of market value assessment to AVA, it certainly needs to be a referendum issue. There's no question about that.

Mr Wildman: But you wouldn't then include increases to provincial income taxes or sales taxes?

Mr Hogg: I think it depends what those increases are doing and how they're being addressed. If it's to assume more debt without a plan for repayment within a very short period of time, then I would certainly —

Mr Wildman: Perhaps if you don't raise the taxes, you will assume more debt.

Mr Hogg: Then if you don't raise the taxes, you will assume more debt and that will cause a problem, yes, and I think that has to be addressed as well.

Mr Wildman: Would you consider user fees to be taxes?

Mr Hogg: Of course I would.

Mr Wildman: So new user fees such as the fee for drugs for the elderly should be subject to referendum?

Mr Hogg: I believe that would be an issue that should have gone to referendum, yes.

The Chair: Thank you very much, Mr Hogg.

That concludes our hearings for this morning, and we will now recess the committee until 3 o'clock. There have been a couple of cancellations to your schedule, so at 3 o'clock we resume in this room.

Tomorrow, though, we have an earlier start than we had initially scheduled. We're going to be starting at 9:30 in the morning and then again at 1 o'clock in the afternoon, due to two additional witnesses that have now been confirmed.

The committee recessed from 1202 to 1503.

GREG VEZINA

The Vice-Chair (Mr John Hastings): I'd like to bring the session of the Legislative Assembly committee to order. We have a number of important people who want to make their views known on the referenda consultation paper. The first deputant up is Mr Greg Vezina. Welcome, sir. Thank you for the book.

Mr Greg Vezina: Good afternoon, Mr Chairman, committee members, ladies and gentlemen. I'd like to very briefly read my submission. I'll go fast and then I'd like, quite frankly, to take questions. I really strongly recommend that you thumb through a couple of chapters in this book which you might find rather interesting.

As part of our submission — both me and my co-author, John Deverell — we've provided the committee with this book. We wrote it in 1993 as a guide to voter action. If you'll turn it over, you'll notice there's a quote on the back from a guy named Mike Harris, who at the time was leader of the Conservative Party, the third party.

Mr Chris Stockwell (Etobicoke West): I knew him then.

Mr Vezina: Some of you people may know him. His quote was, "Essential reading for anyone who believes that governments no longer serve those the people who elect them." In chapters 1 and 2, we were quite critical of the political culture we've developed in Canada where politicians, by and large, don't keep promises. So this book was written before the man named Harris actually formed a government. He sort of laid waste to our theory that politicians don't keep promises; however, he's one of a select few.

I talked to my publisher today, and the publisher and we as authors have granted the committee the right to republish this book in whole or in part or in any form you wish. It really wasn't on the reading list. That's fine, that happens, but it's one of the only books that's been written by a Canadian about our system besides Patrick Boyer's works.

We support both referendum and plebiscite, and we say it depends on the circumstances and the thresholds. We support the idea that both governments and citizens can initiate them. We do not support recall in any form because we believe that recall will be used by political parties to try and bring down governments and not to keep members accountable.

A good example of that would be that if we had that legislation federally, the Reform Party would have spent the last three years trying to find two BQ members to knock off for no reason other than so they could become

the official opposition. We don't think a political system that replaces an MP who in many ways is not accountable to anybody but the party whip with another one who's not accountable to anyone but the party whip is worth even considering. I'd be interested in taking questions on that.

We dealt extensively in the book with the constitutional and the legal implications, including minority rights, which in the index you'll find took one half-paragraph. You'll find our conclusions on protecting minorities rather interesting.

We also dealt with the issue of delegation of power and the constitutional issues that other authors and presenters are more concerned about than we are because we don't believe that any court in this land will deny the citizens the right to make laws and govern themselves. The Canadian Constitution, unlike the American Constitution, has a "notwithstanding" clause. In the American Constitution the rights are clear and if you violate them you're out. In Canada, you can violate all the rights you want as long as it's prescribed by law and demonstrably justified in a free and democratic society. We don't think any judge would prevent the people from making laws and call that undemonstrably justified.

We propose in our book a regime where you have initial sponsors to a petition or a referendum. There's a possibility of withdrawing it because we have some concerns, as other members of this committee will and members of the public, about the abuse of the process. We do not foresee a regime, such as in Switzerland, where the public has 90 days to initiate a review or a recall of everything that's done by government. At some point, as long as we remain a representative democracy — and I have some problems with that. I consider it a little bit of an oxymoron, like "military intelligence." But as long as we have that system, then that system in some sense should function until it ceases to function, at which point we believe the people should have the hammer.

We believe the threshold should be very low, but not so low that it's abused. On the other hand, the 10% or 15% threshold is a joke. That threshold has never been successfully used in a jurisdiction where it's been implemented in its first 20 years. In fact, there is an initiative in British Columbia right now, started by the Western Canada Wilderness Committee, to try and get the hunting of bears prevented. You'll see that we have some comments about referenda such as that, because the interest of someone who lives in the mountains in BC might be different from someone who lives in Victoria or on Vancouver Island. We also think that any referenda or initiative must be tapered somewhat by the interests of regions.

To a lot of people, the answer to that is to make it a 10% threshold in every riding, which means you have to go to Baffin Island in 90 days in the middle of winter to get enough signatures. It'll never happen, so we think a threshold that has a mandatory requirement in every riding guarantees failure.

I would also draw the committee's attention to the fact of what has happened to most governments that have introduced this type of legislation with strong thresholds. In British Columbia, the government was defeated soundly and the recall and the referenda were adopted at

85%. You pretend to the people to give them power at your peril, but they'll accept it and then they'll defeat you for it. That's a historical fact in this country.

We believe in regional initiatives. We also understand that with the increased use of block funding, where the federal government's going to block-fund to the provinces and then the provinces will block-fund to the municipalities, in a large sense — and really I think that's what this initiative is all about, this discussion paper — people perhaps should decide how to govern themselves and how to use the resources they get from their government. Let them decide whether they want to build a swimming pool or a library, as long as the minimum standards are met. We think people who are affected by decisions should be directly involved in making those decisions, obviously subject to civil rights and the charter etc.

1510

We support the two-committees model adopted in federal legislation because there must be some — maybe "controls" isn't the right word — safeguards in the process. We would require broadcasters to provide time to proponents of each side, again as in the case of the federal legislation, to ensure that special interests do not have an unfair advantage. That's where you will get the most criticism of this type of legislation: that special interests abuse it. In fact, in our book our research found that only 25% of the initiatives launched by special interests succeed, but 75% of those they opposed fail.

Mr Wildman: Really?

Mr Vezina: Yes. You'll see that. It's interesting. If you look at our chapter on this, we think we've come up with some reasonable compromises.

We also propose an interesting requirement — and I might not have said it in here the way I mean it, so let me try and say what I meant. We propose a requirement that whenever paid time is sold, an allocation equal to 50% of whatever amount is sold is given to the other side. The reason for that is to make sure that money doesn't win or that broadcasters or newspaper publishers are the only winners in the referendum process or the political process. It's no secret that even the great bastion of freedom, the United States, which is now without legislation, got the major networks to give half-hour blocks to the political parties because even the Americans realize that money has totally corrupted the political process down there.

Our Supreme Court has confirmed the validity of our legislation that puts limits — spending limits, time limits etc — and we support that, but we also support an initiative where advocacy belongs to both sides. You'll notice that even in the great United States the US Supreme Court found that the fairness doctrine on broadcasters, that made them provide time to opposing views on matters of public concern, was constitutional. The fact that Ronald Reagan and George Bush got together with a few broadcasters and punted the legislation is a different issue, but it was constitutional.

We strongly support the creation of a permanent voters list with a guarantee of confidentiality and we think it should be a joint project between federal, provincial and municipal governments. We also think there should be

severe penalties for abusing it, as there are with abusing the voters list in federal elections, including prison. To be honest, if you rely on the ethics of the Canadian Direct Marketing Association to protect the consumers' privacy, I think you might have a bit of a problem with that. Not that they're unkind people, but it's their business to sell and trade information, and I don't think that point of view should make the rules. I think the public interest should prevail.

We strongly support equality and the notion of one person, one vote. You will hear criticism that "There are five million people in the GTA, and half the population of the province in southern and central Ontario, and why should their opinion overrule the rest of the province?" However, in a democracy, as long as you don't have the tyranny of the majority, which we deal with in the book, the people govern, the majority rules.

I'm going to make a comment about the Ontario Commission on Election Finances. Actually, Warren Bailie is here. He corrected me on a point, and I thank you for that, Warren. We do not support the Commission on Election Finances being involved in the procedures of this under its present mandate, structure or accountability, because this commission is biased from its very inception and constituents all the way up. Only parties in the Legislature appoint members of the commission. A clear majority, 66% of the members of the commission, are political appointees. No representatives from any other registered party are allowed either to appear, to listen in or to be involved in any of the process. The committee makes all of its decisions in camera, in private, with absolutely no public scrutiny or accountability. It is the only election commission in the free world besides Russia that operates that way.

Mr Stockwell: Thanks for pointing that out.

Mr Vezina: It's a wonderful little process that takes care of your own. We think we should take care of the public interest first and then we'll worry about taking care of our own.

Up until Premier Harris went into office, the benchers of the law society, who the law said had to be appointed, had not been on that commission for over four years. Since the law said the benchers from the law society had to be on the commission, this government decided to obey the law and put him there. But Mr Bailie can confirm that no representative has been there. Besides the chief electoral officer and the executive director of the commission, there are no other persons on the commission who are not political appointees. We think maybe you should put some public appointees in there, not political party appointees. But there will be some disagreement on that.

We will support — and in fact there are things in the works right now that have been in the works for several years on this area — any challenge, legal, constitutional or otherwise, to the commission being involved under its present structure, because it's not open, it's not transparent and it's not democratic.

We also support something else that the Premier supported, and that's the use of political tax credits for the referendum process. It's interesting that in federal referenda what people did was contribute to the parties,

got a tax credit, and then the parties gave money to the Yes and No committees. It wasn't an open and transparent exercise. We think if a political tax credit exists for political parties and we implement referendum legislation, then it should be used to be able to support the Yes and the No committees.

What we don't support is the thing that the Premier himself introduced in a private member's bill in 1989, that political tax credits are only payable against people who have tax otherwise payable, unlike in the Municipal Act, where if you're not a property owner and you contribute \$100, you get your \$75 back; if you're a property owner, you get it off your tax. But under our provincial legislation and the federal legislation, if you are a business or you are taxable and you contribute \$100 to a party, you get your \$75, but if you're 78% of women, 90% of the disabled, virtually 100% of the poor, you do not get a tax credit.

If we had a law in this province that said that only white males get welfare, it would be unconstitutional. What we did instead was pass a law that says that only rich white males get tax credits for political contributions. We were very careful in this province not to phrase it that way, but the Premier himself introduced a private member's bill in 1989 admonishing the absolute unfairness of the process. Unfortunately, he hasn't yet introduced amending legislation.

We are aware of two cases before the federal tax court over this issue right now, and quite frankly, if there aren't amendments to the legislation introduced by the politicians, we expect the court in its ruling, which is on reserve right now, to write the legislation for you.

We also, quite frankly, are aware of a challenge that's gone to the United Nations human rights committee over a number of these issues. I know the mandate of this committee is not to look at political fairness, but if you're going to look at referenda law and some changes to be more democratic and true, then maybe we've got to make sure that some of the other rules are looked at too.

So there's stuff before the UN on this. There's stuff before the federal courts of Canada. There have already been a number of decisions in some of these areas where legislation has been ruled unconstitutional, for example, third-party advertising restrictions in the case of national citizens' coalitions during elections, which you would have to consider with any bill limiting the spending of third-party groups during a referendum.

The 15% subsidy rule, requiring you to get 15% of the vote in any riding to get a subsidy, has been ruled unconstitutional. Although none of the parties in the Legislature have really faced that in the last couple of decades — a large number of your candidates get the subsidy — a number of the federal NDP candidates and actually over half of the federal Conservative candidates in the last federal election got a real education. The federal Conservative Party lost \$6 million in funding on rules that they rigged, and I do believe in God.

We, I, Mr Deverell and those of us that call ourselves small-d democrats, who are more democrats than we are partisans, will continue to fight for fairness in the electoral system, in the political system and in the governance of this province and this country.

1520

I would be pleased to answer your questions. I'd be pleased to engage in a research project. I'd be pleased to do whatever you ask me to do to help you advance this process. Quite frankly, I must say I admire this government and this committee for this initiative. Well done.

The Vice-Chair: Thank you very much, Mr Vezina. If there are questions, we'll start with the Liberal caucus.

Mr Bartolucci: Thanks very much, Mr Vezina. A few questions, and honestly they're questions that have been repetitive all week. I guess we're just asking for opinions here. Is there a best time to hold a referendum? Should it be held in conjunction with a provincial election or a municipal election or should it not be held? What type of format should the referendum take? What issues should it deal with? Five questions that have been pretty commonly asked by all committee members; maybe you can share your insights on that.

Mr Vezina: Okay. We, in our book, proposed some type of regime for annual referendums. I am aware of the predisposition to do them concurrent with municipal elections — I think that's workable — or concurrent with a federal election. I do not support them being done concurrently with a provincial election. I don't want to sound smart here, but just ask your friends in BC what happens when you try to do something like this in a provincial election. The referendum wins and the government is gone. If you're going to have a referendum, have a referendum; don't confuse a provincial referendum and a provincial election.

Mr Wildman: Then why federal?

Mr Vezina: Because the issues are different, the delegation of power. You can't have a provincial referendum on a federal issue, but you could hold it at the same time as a federal election.

Mr Stockwell: Mr Wildman is way out of order, by the way.

Mr Wildman: It was a supplementary.

Mr Vezina: Am I ever glad I didn't win my seat, boy.

Mr Stockwell: You think you're glad.

Mr Vezina: Yes, I know, you guys were really glad. I'd be in cabinet with you, Stockwell.

Anyway, the bottom line is that we think four years or three years is too long to go. There are major issues that should be resolved in less time than that, and they won't be. What issues? Anything within the constitutional power or jurisdiction of the provinces, but filtered, protected, saved against violating the charter, taking away rights of minorities etc. If the public wants to initiate balanced-budget legislation, let them. Quite frankly, and there are a lot of people who won't like to hear this, if the public wants to decide whether to have hospitals or separate school funding, let them. That's what we believe.

Was there anything else that you asked me that I didn't answer?

Mr Bartolucci: No, you answered it quite well, thanks. You made the statement that advocacy belongs to both sides. I agree 100%. Should that advocacy be equal when it comes to financial assistance?

Mr Vezina: No.

Mr Bartolucci: No?

Mr Vezina: No. We live in a society where sometimes when you work hard and make a few bucks, you're allowed to win. I don't think we should then say, "You lose." We went with the half-measure philosophy: If I want to go out and get 1,000 people or 10,000 people to contribute to the cause I want to support and propagate my idea, I shouldn't have to raise just as much money automatically for the other side. But on the other hand, I don't have a problem with an obligation for the opposing point of view to be partially financed out of my largess, particularly if you allow me to use the political tax credit system, which is the public's money. So then you have even, I would believe, a legal and constitutional obligation to make sure the other side is heard.

Now, broadcasters — and I'll just take a sec — will complain that, "We don't want to give away air time; we want to sell time to the Canadian Nuclear Association, and we don't want to sell any time to the tree huggers." Under the broadcast act, they're totally entitled to do that; the CBC is famous for that, sells all kinds of commercials to the lumber companies, but if you want to say, "Don't chop trees," man, you've got to blow up a building to get in the place. So there's a check and balance.

With respect to a referendum, those rules shouldn't apply. I would support — Dougie Bassett, listen to this — a regime that paid broadcasters maybe the cost, not a profit but the cost, of that supplemental time. Don't let them make money on it — because I believe in free enterprise still, this week — but don't take the money out of the broadcaster's pocket either. Broadcasters have an obligation to act in the public interest, but they don't have an obligation to go bankrupt because of a referendum.

Mr Bartolucci: One final question: Should there be such a thing as mandatory referendums, and how would you define a mandatory referendum? I still haven't been able, after three days, to clearly define what is meant by a mandatory referendum.

Mr Vezina: Quite frankly, I've written a book on this, and I don't know what you're talking about. The only mandatory referendum, to me, is one that's initiated by the people, okay? A government referendum is not mandatory. Governments change. So a mandatory referendum is something that has sufficient signatures. You'll notice in our model we suggest that you don't go get all your signatures first; you go get 200 sponsors for the bill. Then it goes to the Attorney General. Then, if the government of the day introduces legislation close enough or buys off or pieces off or compromises 100 of the original signatories, the referendum is gone for a year, or for the term, so that politicians — and politicians will be surprised I'll say this — have the right at the end of the day to be brokerage politicians, to broker a compromise, to broker a deal. So the only mandatory one is where it's been approved, it's got its original 200 sponsors, it goes and gets its 3%, 4% or 5%; that's mandatory, and no politician can change it.

With respect to the constitutionality, the bill, the legislation, will require the Legislature, if an affirmative resolution is passed, to introduce the legislation and will require the Lieutenant Governor to give it royal assent. If they fail to do so, the House would be prorogued, the

Lieutenant Governor is gone and we get an election. That's the way to get around the constitutionality boys, because no government is going to give up office, ignore the people and go to a vote and go to an election on the issue that, "We're not doing what the people voted on in a referendum."

Mr Bartolucci: Thank you very much for your insights; I appreciate it.

Mr Wildman: I've never had the pleasure of meeting you, but I know John Deverell so I'll be interested in reading your book.

I want to ask a couple of questions that your comments raise in my mind. One of the arguments that has been posited in favour of referenda as a tool for democracy is that it is a form of direct democracy, it brings power back to the people. In the discussion paper presented, it is suggested by the Premier, or his office, whoever wrote the paper, that special interest groups — and I'm paraphrasing here; I'm not using the exact words — have somehow subverted the democratic system by influence or lobbying and getting their points of view put forward and made into policy and into legislation.

You said in your presentation, if I heard you correctly, that there must be safeguards in a referendum law to prevent "special interest groups" from doing exactly that to direct democracy.

Mr Vezina: Absolutely.

Mr Wildman: We've had some testimony before the committee about California, where referenda are used quite often, that there are actual firms there —

Mr Vezina: Yes, they're signature companies.

Mr Wildman: — that for \$1 a signature will get you the number of signatures you require and ensure that they are valid, that the people are voters and that they live in the areas where they're supposed to and so on. In a sense, then, all that says to me — and I guess you're speaking to that — is that "special interest groups" will adapt to whatever the regime is and will ensure that they get their position put forward in whichever way they can. You indicated that 75% of the questions they oppose they've been able to stop —

Mr Vezina: Or win, yes.

Mr Wildman: — whereas only 25% of the ones in which they were proponents they were able to win.

I have one other question after this, but this I think is crucial. It's been suggested that the way we avoid this is by having a regulation as part of the referendum law that prevents the purchase of signatures. In other words, all of the work would have to be done by volunteers and we would not be able to have professional organizers become involved, as they are obviously involved for political parties in election campaigns. How do you respond to that?

Mr Vezina: Sorry, but I disagree. I think you can handle this by process. I wish we had more time, but in the book we dealt with this extensively. If it is transparent, if the referendum commissioner has to publish the names of all the organizations that are spending money and getting signatures, what you do is you make the process so transparent, so open and public, that you don't have the back door, background abuses. It's not as easy to do it in the system we designed.

1530

The other thing you're allowed to do under the system we designed is if the Canadian nuclear industry has a bill they want to get passed or something they want to defeat, we would allow another group to initiate a similar referendum on maybe a similar subject matter —

Mr Wildman: A counterquestion.

Mr Vezina: — a counterquestion, and if that question prevails in terms of percentage of the popular vote, the lobbyist lost it anyway.

Mr Wildman: I want to assure you that I'm attempting to look at this from both sides.

Mr Vezina: It's hard to do, by the way.

Mr Wildman: There are times when even in partisan politics we can do that. Obviously, what defines democracy is majority rule, but what also defines democracy is protection of the minority.

Mr Vezina: Absolutely.

Mr Wildman: There has been the suggestion that the protection for minorities in our system is in the fact that the Charter of Rights and Freedoms is entrenched in the Constitution.

Mr Vezina: That's it.

Mr Wildman: It was suggested by representatives of the Catholic teachers yesterday — they acknowledged that was the case, but it was suggested by them that while they might be able to have the courts test a matter and declare it ultra vires if it went against the charter, the very process of the campaign around a referendum would be divisive and detrimental to the interests of the minority, and that rectifying the situation subsequently in the courts would deal with the legal matter but there would be societal ramifications which would be unfortunate and wrong just by having a campaign against whatever it might be, whether francophone rights or Catholic schools or whatever.

Mr Vezina: We tried again to deal with that by saying that before a referendum is approved, it has to go to the Attorney General and has to be vetted before the fight starts. Any other suggestion would be akin to saying you don't have the right to disagree because it'll make things uncomfortable. I'm sorry, democracy may be messy at times and I'm not real happy with the system we've got at times, but anything else doesn't work. So it may be uncomfortable for certain groups. In fact, let's take a second and deal with separate school funding.

The introduction of separate school funding was not done through the will of the people. You had two political parties in this province that supported it for decades and couldn't get elected. You had one party that opposed it and got re-elected and re-elected and re-elected. It's interesting that after 42 years, within months of changing the policy and changing leaders, that party was defeated. That was a case, to be honest, where the will of the minority there in some sense superseded the will of the majority.

I want to take a second and deal with this, because I'm a Catholic. I left the Catholic system and I campaigned against separate school funding. I left the Conservative Party over it. I put my kids in public school and I have a daughter four and a son five and they're one year apart, but one's born in December and one in January, so my

little girl already started school two years after my little boy. In Peel region they cancelled separate school funding; my little girl gets to go to school three full calendar years after her brother who is one year and one day, basically, older. Now you let me vote whether I want separate school funding or junior K. Watch how I'll vote.

I understand that in a democracy using the referendum and letting the people have a say, people are going to say some things that people don't like, but children getting educated as opposed to children getting a religious education, that's a question I think a lot of Ontarians would like to answer.

Mr Wildman: I really ask this with all sincerity and I don't mean to offend anyone, but there is in political theory the view that even the Nazi system was majority rule, that even though you had a minority in charge running things, that minority could not stay in power without at least the acquiescence of the majority. We've seen, when the majority no longer acquiesces, what happens to the Communist system, for instance, when the system collapses because the majority will not support it. You would have there surely the tyranny of a minority party, but at least the acquiescence of a majority in abrogating significant minority rights and that's more than uncomfortable, I would suggest.

Mr Vezina: I would respectfully suggest to the honourable member that it's a moot point, that the Supreme Court is going to decide in the case of Newfoundland and will decide in the case of Quebec that religious schools are gone. The sole defence of this regime was the constitutional argument, and if the constitutional basis of the rights is gone, then we've got a different picture. But I shall say again, as I said in the book, that this is a matter for the Attorney General and the courts to decide before we get to vote on it, before the rhetoric happens. I agree with your point. The purpose of referendums is not to injure or harm people; it's to help people. But sometimes, as the Premier so wantingly has said, tough love has to be done.

Mr Bill Grimmett (Muskoka-Georgian Bay): Thank you, Mr Vezina. You've been providing a very energetic presentation today and I want to thank you for the book. It looks like it's quite well-laid-out and I look forward to reading it. I had a chance to look at the very brief section on recall, I've heard your comments on it. I'm quite surprised, given your views on referendums, that you wouldn't be more sympathetic to the issue of recall, particularly since it seems to me that you don't have a lot of sympathy for the prevailing political parties.

It's been argued by other presenters that referendums and recall might weaken the grasp that the party whips have on members. From my perspective and from the perspective of the people who sent me here, anything that would weaken the party hold on the individual member would be welcomed by the public. I know from the results in British Columbia that the idea of recalling a member is very popular among citizens. So I'd like a further explanation from you on why you don't think the method of recall is one we should be pursuing.

Mr Vezina: Because the day that — and I'm sorry; I don't know you — Jim Brown got elected, he got elected with, was it 37? What was your percentage of the vote, if I may ask?

Mr Jim Brown (Scarborough West): It was 46%.

Mr Vezina: Oh, Jeez, you're a bad example. Good for you. That much? You see, I ran in Scarborough-Ellesmere, and wow.

Okay. The day a member gets elected at 37% of the vote, he's recalled; 62% of the people didn't vote for him. People who know me know I've been at this game a while. I know what I'd do if I had recall. I'd use it to absolutely ruin and terrorize and grind the party system and the legislative system to a halt. You'd have members coming in and out the door every two weeks. I'd initiate a recall on every single member who didn't get 60% of the vote in his riding, and when a government won a two-seat majority, it would take me 20 minutes to go after two members.

All that recall does is displace. The reason for recall is to make your members accountable, who are, quite frankly and in all honesty, under the British parliamentary system accountable to no one but the leader. The leader in a province, the Premier with a majority, or the federal government with a majority in Canada, has more power than the former general secretary of the Communist Party in the Soviet Union. It is absolute power.

There's a quote in here from Brian Mulroney which I'll paraphrase, and this is my point. Brian Mulroney said, and one of the things he said I agreed with, and I'll try to do an André-Philippe Gagnon and speak like Big Brian: "There are only two headlines I ever really liked. The first one said, 'Brian Mulroney Wins Big Majority.' The second one said, 'Brian Mulroney Wins Another Big Majority.' Because you know what? All the other stuff doesn't matter," like governing and policy and everything else.

If you're going to give people direct democracy, give them a hammer. If you won't do what they want you to do, why should they throw you out to get someone else they might have to throw out to get what they want to do? Let the political system be the political system, but don't put Dalton Camp and campaign as in his elections, and all these American companies that are in business ruining political parties and ruining constituencies, don't put them in business in Canada, recalling members for nothing more than partisan reasons that have nothing to do with the public interest.

You want to play politics, play politics. When you fail, give the people the sledgehammer and then when they try to use it on you, and I said this in the book, find a way to take it away from them. Then if you don't compromise, then let them use it. It's my belief.

The Vice-Chair: Thank you very much, Mr Vezina, for your very passionate views on the referenda paper.

1540

DEMOCRACY WATCH

The Vice-Chair: We're going to go to our next deputant and we're going to use teleconferencing. The way we're going to do it, members of the committee, is that we're going to have Duff Conacher from Ottawa submitting his views on the referenda consultation paper. He has 30 minutes in which to make his views known and for questions. When we get to the point where you

ask a question, please identify yourself. We are now going to Ottawa to hear Mr Duff Conacher. Go ahead, Mr Conacher.

Mr Duff Conacher: Thank you very much for the invitation to testify. I hope you can all hear me fine.

My name is Duff Conacher. I am the co-ordinator of Democracy Watch, which is an Ottawa-based citizen advocacy group. We focus on issues of democratic reform, government and corporate accountability and citizen participation in government in Canada.

I will make brief remarks because I think it will be more useful to engage in a dialogue with you on the paper. My remarks will just talk generally about the work we have done on this issue and general recommendations.

The work we have done is mainly in the form of a paper, which I will submit to the committee, which was published in the University of Toronto Faculty of Law Review in 1991. It's called "Power to the People: Initiative, Referendum, Recall, and the Possibility of Popular Sovereignty in Canada." It sets out 88 recommendations for an initiative, referendum, and recall system in Canada. I obviously won't go through all 88 recommendations right now because I only have 15 minutes, but I will submit this paper along with specific comments aimed at answering the questions that are set out on pages 41 to 43 of the discussion paper that has been released.

Generally, we are pleased to see the discussion paper and the openness in the discussion paper, specifically on some issues which have consistently been raised in many jurisdictions to prevent the implementation of initiative and referendum and recall systems. One of those is that the paper recognizes there is a cost to democracy and that cost can be easily quantified — as it mentions, the Charlottetown referendum cost \$100 million — whereas the benefits to democratic processes often can't be quantified because they are benefits in terms of the legitimacy of the government, the legitimacy of the government decision-making process and the feeling of enfranchisement by the voters.

These are social benefits you can't often easily put a dollar figure to, but that's why we are pleased to see that the discussion paper recognizes these benefits do exist, even if they can't be quantified in dollar terms.

The paper also recognizes the conflicting roles of MPs and how that underlies any initiative, referendum and recall system and the importance of legitimacy of decision-making. We are happy to see that issue recognized and would also like to raise a related issue, which is the problems with our electoral system which most often result in a government being elected that holds a majority of the seats, even if the governing party has not won a majority of the popular vote.

We would call on the government to also examine our electoral system within the context of looking at initiative and referendum, because there are means that are at work in many jurisdictions which allow the popular vote to be much more directly and accurately reflected in the Legislature, or federally in Parliament, which we feel would go a long way towards helping people feel that their votes count when they cast their ballots at election time and also that their vote is reflected in the Parliament and that the Parliament is therefore more legitimate

because it would reflect the diverse views of the voters, as opposed to our current system, which usually ignores the votes of the majority of the populace.

In the section concerning the history of referenda and aspects of referendum laws, there is mention of the British Columbia initiative and referendum system and it is mentioned that no referenda have been initiated in BC. There's a very clear reason for this, which is that the BC system, some would argue, is not even a democratic reform because it requires 10% of voters in every single riding in the province to be signed up on a petition before the petition can be initiated. That has set up a very high barrier or high standard that anyone has to meet to even get a question on the ballot, at which time then all the voters in the province would be able to vote on the initiative.

In moving into the questions on implementation, I think the issues have been identified very well: the scope, the initiation, defining the issues, voter awareness, deciding the outcome, issues of referendum operations and other rules, other parts of referendum operations. This is exactly the same framework I used in my paper in 1991 and ended up trying to deal with all these problems with 88 recommendations, which I believe simply shows — and the discussion paper shows this as well — that there are many questions to be answered, many decisions to be made before figuring out exactly how such a system would work.

But the BC model is one example which I think should not be followed if we're talking in the area of initiation. There should not be such a high requirement of 10% of the voters in every single riding in the province having to be signed up on the petition. That is too high a barrier simply because all that you are gaining by having the signatures on the petition in a citizen-initiated referendum is a chance to put a question on the ballot. The real decision-making begins when all the voters in the province have the chance to vote.

To have such a high barrier simply says, in my mind, that the BC government was not really interested in allowing voters to have a say, because only the very largest groups in BC will ever be able to meet that standard of putting a question on the ballot.

In most states in the US — and the paper I did in 1991 reviewed most of the jurisdictions in the US, as well as Switzerland and Australia and their systems — there is usually a 10% to 15% requirement in terms of initiative. What I actually set up in that paper is a five-stage process for initiative. I would like to speak mostly about initiatives because I think that's where a lot of issues are raised, as opposed to in the area of a government-initiated referendum or plebiscite.

1550

The first stage in the process was to apply to the board, a board that would be set up independent of the government and would assist people in formulating questions and essentially making sure that the questions fit within the powers of the provincial government, addressing some of the issues raised in the discussion paper about jurisdiction. So there would be an initial check of the question by the board and there could even be a reference to the courts to determine the constitutionality of

certain initiatives, but the main role of the board would be to educate people on how to use the process.

The question that had been formulated would then be submitted to the government, and then the government would be given a certain time period to decide whether it would act on this particular issue itself, in which case an initiative would not be necessary at that time. So if something was on the government's agenda, or was potentially on the government's agenda, the government could essentially accept the initiative and then formulate legislative amendments based on the initiative, thereby saving the costs of going through the whole referendum process.

The second stage of the five-stage process that I set up was to have an initial petition which would only require 0.5% of the vote or 10,000 signatures. It would have to come from more than one constituency. This initial petition would qualify the petitioner for public financing to then take the petition to a broader and higher level, which would be the third stage, which is a qualifying petition. Generally, I had different recommendations, depending on what the petition was for. If it was for a plebiscite, then there would be a lower level of signatures required than for a binding referendum. The reason for that is that a plebiscite would just be advisory, so it's not going to have as great consequences as a binding referendum would have.

Moving to the fourth stage of the actual campaign, there are many rules that I suggested in the 1991 paper. I'll just list them quickly and then take your questions on them.

One was no government spending. This is to allow for the referendum to be essentially conducted as a citizen process and not allow the government to influence once side or the other. I think there are good reasons for that which have been shown in past referenda in Canada and also in the US.

Public financing: What I favoured in the 1991 paper was the Quebec system of setting up committees which would then represent the Yes and No sides in any referendum. There would be restrictions on donations by individuals, corporations, unions or other organizations to those committees; as well, disclosure of donations before the vote so that people know who has been supporting in terms of financing, in addition to the public financing that would be available, the Yes side versus the No side.

As well, in order to have voter awareness increased, I took the measure which five states in the US use which is to send out a ballot pamphlet that sets out unmediated messages from the Yes and No sides on each referendum question. Some would say, "You're going to end up with people receiving a 200-page document through their door a week before the vote." One of the recommendations I made was actually that there should be a limit on the number of questions that can be on any ballot, because I think there should be a concern about the quality of the decision-making in addition to the quantity of the decisions of those who are involved.

As well, in order to have unmediated time for the Yes and No sides, set aside free broadcasting, radio and television time — that was part of the recommendations — as well as a series of public forums. This would

all be covered by public financing and a requirement on radio and television broadcasters to provide this time.

If there is a concern that having these Yes and No committees — and I can see it as a concern, with the Quebec system having a Yes and a No committee that are the only ones allowed to spend in a referendum campaign. I think the reason Quebec did this is that it makes it administratively easier to audit and also hold in check and generally administer the referendum system. But there is an argument saying that anybody should be able to speak out on a referendum question on the Yes or No side.

If that is the case, if that was favoured, I believe that there still should be restrictions on that spending, and the restrictions should be based on the actual popular support of the speaker. For example, if an organization wanted to speak on a particular referendum Yes or No side, it would be restricted to spending a certain amount per member of that organization. That is to prevent one person from spending millions on one side or the other and essentially to tie the amount spent to the actual popular support that any one person or organization has. I think this should also be in place in terms of third-party spending for our election campaigns in Canada.

I would just offer one example to show the reason why I think this should be in place, which is that if just before an election campaign or a referendum campaign I happen to buy a lottery ticket and win \$5 million and then decide I want to spend this either supporting or attacking one party or another or supporting or attacking one side of a referendum campaign, I find it quite absurd that in a democracy I would be allowed to spend that \$5 million simply because I've been randomly chosen through a lottery.

I know there are lots of debates about whether, if I spent that \$5 million, it would have any effect on the outcome. I think there is another whole question which should be asked, which is, what about the quality of the debate? Shouldn't we try to foster as many people speaking as possible but only speaking to the extent that their position has actual popular support? If I am able to spend \$5 million just because I've won a lottery, I'm going to be able to drown out a lot of other messages that might be out there in an election and referendum campaign.

So if the committee, as the government continues to explore this issue of referenda and initiative and recall, feels that the Quebec system is too constrained and that third parties should be allowed to speak generally, I would hope only that you would also put in place restrictions on that spending so that the influence of big money is removed from the referendum and initiative system. After all, we believe in the principle of one person, one vote, so why should we allow somebody to spend more than you would feel an average person could afford to spend to have more influence during a campaign if, when it comes down to election day, we only give each person one vote?

Those are generally the stages that I set out in the paper of 1991. As I mentioned, I will submit that to you. It has much more detail and examples from around the world.

1600

There are two thoughts I would like to leave you with. Many people have come up with many problems with initiative-referenda systems. While I don't believe that all these problems are red herrings, I do believe that all of them can be solved and all of them can be addressed. One I did not mention is whether there should be a quorum or a requirement for more than a simple majority, and again it's a problem I think that can be solved. It's just as with any other legislative decision: You make decisions and then you realize that you haven't solved all the problems, but you've tried to solve most of them, and these problems are worth solving in order to have a system of initiative-referenda come into place for all the reasons, mentioned in the introduction of the discussion paper, of legitimacy and the feeling of disfranchisement by voters.

In that same light, I would leave you with this quotation from Michael Stewart, who wrote in 1959 in his book *Modern Forms of Government*:

"To assert that a group of elected persons is permanently and on main issues wiser than the whole people is to move from democracy towards dictatorship, but to deny them" — that is, the elected persons — "at every stage the power of decision on particular laws is to move towards anarchy."

I think Michael Stewart is calling for a balance between elected officials making decisions and the whole people making decisions and that these two can be very complementary and can lead to a more legitimate and better form of government decision-making, and better results at the end, in terms of many different reforms and legislative initiatives that for various reasons — our electoral system, our party system or just simply the structure of our parliament — are never addressed or are addressed without due regard to the will of the people.

I will end there. I'm happy to answer any of your questions.

Mr Clement: Thank you very much, Mr Conacher, for your analysis. I think we all look forward to reading your paper and studying it in detail.

I wanted to come back to the financing aspect because that's something about which you spoke passionately and cogently. We have heard some submissions, however, in this committee which have sought to dispel the, I suppose, intuitive conclusion that more money equals more influence. They cite the Charlottetown referendum as a prime example, as well as referendums and other electoral decisions in other countries, including the United States of America, where the losing side had outspent the winning side 10, 20, 40 to 1 with no discernible impact. What would your reply be to those contentions?

Mr Conacher: First of all there are other issues: not only, do you get greater influence, but do you drown out other voices by being able to spend as much as you want? I think we should be concerned about the diversity of voices that are heard during a referendum campaign and try to facilitate as many people being heard, but not to a greater extent than any one person has popular support for their position.

There have been studies going both ways. A study that was conducted showed that in four US states, in 56 of 72

measures held between 1976 and 1982, the high-spending side won.

Mr Clement: Is there a chicken-and-egg issue here? Maybe I'm being naïve, but could it potentially be that the winning side spent the most money because they garnered the most supporters because they were on the right side of the issue? Can that argument be made at all?

Mr Conacher: In most of these cases it's one or two actors on one side or the other that are spending way in excess of their popular support, so it's not based on their donations; it's based on, for example, a corporation spending tens of millions of dollars of its own money to defeat an initiative without any real indication that the populace supports their side, and that's why I say you should try to limit spending. If you're going to allow anybody to spend in a system, limit it according to actual popular support that they have. For example, with an organization, they would be able to spend according to the numbers of their members. If they had 20,000 members, then you could settle them in being allowed to spend \$5 per member, so they would be allowed to spend \$100,000 but no more.

With corporations you would limit it to their shareholders — this is individual shareholders, not other corporations that hold shares in them — who would have to, in the case of a corporation, I feel, express that their corporation should be involved in a particular initiative campaign and that the shareholders are interested in the corporation taking a position on that campaign.

If we believe in the principle of one person, one vote on election day, then why in a campaign finance system would we abandon that principle?

Mr Bartolucci: Thank you very much for your presentation. Could you please tell me how much limiting you would have for referendum possibilities? Would you limit it simply to constitutional issues or those regarding tax increases or would it be broader than that?

Mr Conacher: In my research for the 1991 paper I actually saw no reason to put a limit on what questions can be put to the populace through a referendum system other than there being some problem with the Constitution as it is, either in terms of jurisdiction, that if it was put in, the province of Ontario would not be able to act in this area, or the charter.

That's why the initial stage of the process that I set up was an application to an independent board which would have a staff of lawyers who could provide opinions on initiatives and whether they would be constitutional at the other end; and another stage in the process, that there could be a reference to the courts and the courts could rule, as they do in other areas where the government refers a question to them to rule that would derail the process if it was found, if this measure passed, to be unconstitutional by the courts. It might delay some initiatives from going forward, but I don't see any reason to put a limit on the kinds of questions that can be put to voters through this process.

Mr Bartolucci: My last question is twofold: What percentage would be your threshold, and should that threshold reflect geographical areas throughout the entire province?

Mr Conacher: The threshold that I set was different for each type of initiative or referendum. Various types have been set out very well, I think, in this discussion paper, from a referendum to a plebiscite through to an initiative.

If it was initiated by petition, generally I was looking at two thresholds, which were 5% to 10% of the vote, depending on the type of initiative, or a number of signatures, 100,000 signatures. This is because I was making general recommendations that would apply to any province, and it would be whichever is less. I was expressing it as 5% to 10% of votes cast in the last election as opposed to registered voters, using voter turnout as the basis, or then having a certain number of signatures, such as 100,000 signatures — 100,000 would apply more, for example, at the federal level — to ensure that you wouldn't have an enormously high petition level. This is what is used in Switzerland as well. It's a percentage or a certain number of votes so that the barrier is not too high.

1610

The other part of your question with regard to having more signatures collected from more than one area, the general recommendations that I put in, again taken from various states and other systems, was that the signatures would have to come from 10% of the constituencies in the province and no more than 25% of the signatures could come from any one constituency.

In terms of voting, and I know the concern has been raised in the media by the mayor of Sault Ste Marie about whether you were going to have one region dominate, right now our electoral system doesn't necessarily allow that because we have, generally, representation by population. We have the seats across the provinces which then lead to the government forming a majority in some way or another.

In a lot of the systems, for example in Australia, when it comes to the vote, there is a requirement to have a majority of voters, for example to amend the Constitution, in a majority of the states. Then you get a kind of regional requirement on having a vote.

In putting something on the ballot, I don't think you should require signatures to come from across the province, because it sets too high a barrier, especially in a huge province like Ontario. But when it comes to the vote, maybe there is room for consideration of having some sort of regional balance in the vote and having to have a majority in a certain number of regions of Ontario for something to pass. I hope that's helpful.

Mr Wildman: Yes, thank you, that is helpful. My name is Wildman. I'm from northern Ontario, so I'm interested in your comment on that.

Mr Conacher: I guess I would just say generally that all these problems can be solved, that's what I feel, and none of them amount to enough of a reason to actually reject putting in place such a system.

Mr Wildman: I understand your position. I noted that you've done a lot of work on this, and you mentioned that Switzerland, along with California, is one jurisdiction that uses referenda extensively. We were told by Mr White, who is the Reform MP from North Vancouver and a proponent of referenda, that in Switzerland, on average,

only about 15% to 18% of the electorate participates in the referenda.

Since we're told that one reason for moving towards referenda is that we tend to have low turnouts in general elections, that many electors are cynical and feel they don't really have a say, in your studies do you have any explanation of why there are such low turnouts in referenda in Switzerland?

Mr Conacher: In the US they face this in some cases as well simply because some of the questions put to the voters are not the most burning issues.

Mr Wildman: He was talking about averages. He wasn't talking about specific ones. He said on average it was only 15%, which is much lower than the turnout in our general elections. In our general elections the turnout is somewhere in the neighbourhood of between 65% and 70%, on average.

Mr Conacher: Often higher. I actually set, in the 1991 paper, a quorum of 50% that would apply to all votes, but just a simple majority —

Mr Wildman: Sorry, I wasn't asking what you think should be the case. I was asking you, since you are an expert in this area or at least have done significant work in this area, you must be familiar with the situation in Switzerland, as was Mr White. I was wondering if you had any explanation why in a country where this is an integral part of the political system, an attempt to have direct democracy and to give a role to individual electors on important questions, there is such little demand for referenda.

Mr Conacher: Actually, I am unsure. I don't know the Switzerland system as well as I know some of the US states. I'm unsure whether they hold all of their referenda at the same time as they hold elections.

Mr Wildman: They have them once a week almost.

Mr Conacher: I know within the cantons, but I'm not sure at the federal level, and I'm not sure whether Ted White's figure is from their federal referenda. But again, it's a problem that can be solved if you first of all limit the number of questions that can be asked. You can run into voter fatigue, and I think they have run into this in California, where there isn't a limit and sometimes people are facing 80 questions when they step into the ballot box.

Secondly, if you limit the number of questions and technically hold referenda at the same time as a municipal or a provincial election — a provincial election would be the best, obviously, because then it's the same voter pool, because you run into the problem with municipal elections of some people not ever having municipal elections because they don't live in an organized municipality.

Some would say if you're going to limit it to, say, five questions per ballot and it's only going to be held at provincial election time, "Well, that's not direct democracy enough for me." But I think when you look at the costs and benefits, which are not costs and benefits in terms of dollars but the costs and benefits in terms of having a quality process that really does improve the decision-making and improve the involvement of citizens in the decision-making process, there are a lot of good reasons to limit the number of questions and to only hold them at the time of provincial elections.

Mr Wildman: I think you've answered the question well. Just one other question. If it were determined that referenda would be held in conjunction with provincial elections, as is the situation in California, and you limit the number of questions, don't you still run into the problem of having the election campaign influence the referendum campaign and vice versa? You would have each candidate, I suspect, questioned extensively by the proponents and opponents of the referendum question as to what their position might be on the question and the personalities of the candidates and their position influencing the outcome of the referendum, as one might suggest was one of the many contributing factors in the defeat of the Charlottetown accord, that being the unpopularity of the Mulroney government at the time of the campaign.

Mr Conacher: Yes, I think you would if it was a government-initiated referendum, more so than if it's a citizen-initiated referendum. But I think that only speaks to the point that Michael Stewart made, which is that these two systems can be complementary. I think holding referenda at the time of elections will show how they can be complementary and how people look to their leaders but will also look to other speakers in the referendum campaign, look to potential leaders from the opposition parties who are challenging the government in the election.

It will only help in terms of people paying attention to issues during election campaigns in terms of getting more specific platforms, which is something that is generally being required by voters now from political parties, more specific platforms and more specific promises. This will all complement that because people will look at the referendum question and say, "Well, this is a very specific measure," and then compare it to the promises of political parties and say: "Those are kind of vague by comparison. Maybe I should be paying a bit more attention to what specifically this party is talking about doing if they get elected."

So I think we will end up being complementary. If it is the case that sometimes particular personalities will have an effect on a referendum question based on what side they take, I don't think that would be prevented if you held a referendum outside of an election campaign. Political party leaders would still be questioned on their stand because they are in that role as leaders of political parties.

The Vice-Chair: Thank you very much, Mr Conacher, for your participation in today's committee proceedings, and we look forward to getting your written submission.

Mr Conacher: Thank you very much, and I hope you will extend this. I'm a bit unsure about where the process goes from here, but I hope it does extend to a more specific paper, with recommendations, and another round of hearings and that the process is kept open throughout, as is only fitting for a process of consultation on a mechanism for increasing citizen participation in government decision-making.

The Vice-Chair: This is only chapter one. Thank you very much, Mr Conacher. We're going to delink now and have the next group to the table.

Mr Stockwell: Listen, how we do know that's Duff Conacher and not somebody impersonating Duff Conacher?

The Vice-Chair: I actually was in Ottawa two weeks ago to have the voice certified. I have a voiceprint, Mr Stockwell.

Mr Stockwell: You've got a voiceprint on that.

The Vice-Chair: Yes, we have.

1620

ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS FRANCO-ONTARIENS

Le Vice-Président : Bienvenue au directeur général et au président de l'Association des enseignantes et des enseignants franco-ontariens. You have half an hour in which to present your views. You can take up the full thing or have some questions that members of the committee may want to present in that half-hour.

M. Roger Régimbal : Merci. Je vous présente M. Guy Matte, le directeur général de l'Association des enseignantes et des enseignants, et moi-même, je suis Roger Régimbal, son président.

AEFO remercie le comité de l'Assemblée législative de lui donner l'occasion de présenter quelques réflexions pendant ces consultations sur les référendums. L'AEFO représente les quelque 7000 enseignantes et enseignants qui oeuvrent dans les écoles de langue française en Ontario.

L'AEFO croit que les législateurs doivent assumer leurs responsabilités et leur obligation de gouverner et d'encadrer l'appareil exécutif. Nous ne croyons pas que des référendums, sauf peut-être dans des circonstances extraordinaires, devraient être tenus. La tenue de nombreux référendums n'augmente pas, à notre avis, la responsabilisation de la citoyenne et du citoyen ; elle amoindrit le rôle du législateur.

Cependant, si le gouvernement actuel insiste quand même pour abroger les responsabilités de l'Assemblée législative, l'AEFO désire faire connaître son point de vue sur un éventuel projet de loi.

Plus une formule est utilisée, plus elle perd de sa valeur. Il convient de limiter les référendums à des questions ou des sujets particuliers de politique publique. Il convient de les interdire sur des sujets qui iraient à l'encontre de la constitution canadienne, de la Charte des droits et libertés et de la Charte des droits de la personne de l'Ontario. De plus, le gouvernement ne doit pas permettre qu'on se serve des référendums pour limiter ou réduire les droits de la minorité.

Aucun référendum ne devrait engager l'Assemblée législative. La législature doit conserver la primauté de la loi et déterminer quand et sur quel sujet se tiendront les référendums organisés par la province. Aucun projet de loi ne devrait contenir une disposition qui ferait que seul un référendum pourrait abroger ladite loi.

Il nous paraît évident que si le gouvernement actuel propose un projet de loi sur les référendums, ce projet contiendra des dispositions permettant aux citoyennes et aux citoyens de présenter leurs propres initiatives à une consultation populaire. Une telle proposition doit se faire dans un cadre rigide pour empêcher les initiatives qui banaliseraient le processus en multipliant les questions soumises.

Une pétition d'au moins 10 % des électrices et des électeurs devrait être requise pour soumettre une question à la population sans passer par l'assentiment de l'Assemblée législative. Cette pétition devrait être colligée dans un maximum de 90 jours. Finalement, il vaudrait mieux que l'Assemblée législative conserve la responsabilité de soumettre les questions à la population et d'en développer le libellé.

Le résultat du vote référendaire de toute question soumise par un groupe de citoyennes et de citoyens ne devrait pas avoir force exécutoire, ni engager le gouvernement ou l'Assemblée législative. Tout au plus, ce résultat exprimerait-il d'une autre façon le point de vue de la population sur un sujet d'intérêt. Un sondage scientifique aurait pu donner le même résultat, sauf que le débat référendaire pourrait avoir permis un débat public intéressant.

Nous croyons que pour éviter les coûts substantiels, les référendums, s'il faut les faire, devraient se tenir au même moment que les élections provinciales. Un nombre limité de questions pourrait être présenté : 10, 20 ou 30 questions en même temps risqueraient d'embrouiller le processus, d'empêcher un véritable débat public et de noyer les questions importantes parmi le grand nombre de questions soumises.

Si le gouvernement tient à soumettre une question à la population sur un sujet donné, il devrait le faire tôt dans le processus de développement du projet de loi ou de l'initiative. Toute proposition présentée devrait recevoir une majorité de 50 % plus un de tous les électeurs potentiels pour déclarer que les résultats sont déterminants. Le résultat du référendum permettrait à l'Assemblée législative de trouver les compromis requis pour adopter un projet de loi important.

Finalement, les citoyennes et citoyens et le gouvernement devraient pouvoir en appeler au système judiciaire s'ils croient que les questions soumises vont à l'encontre de la constitution canadienne, de la Charte des droits et libertés ou de la Charte des droits de la personne de l'Ontario.

L'AEFO remercie le comité de l'Assemblée législative de lui avoir donné la possibilité de soumettre son point de vue.

Mr Wildman: I want to thank you for your presentation. You're basically saying that you would prefer plebiscites to referenda. Is that a fair comment on my part?

M. Régimbal : Un plébiscite comparé à un référendum, le coût est quand même là. Comme je l'ai dit quelque part, un sondage scientifique aurait exactement la même envergure qu'un plébiscite.

Mr Wildman: If there were a system set up that would make referenda results binding on the government — I know that you've said you don't think they should be, but if they were — are you concerned that it might be possible that despite the fact that the government has said there should not be any questions put which would be ultra vires, which would violate the Constitution or the Charter of Rights and Freedoms, there might be some groups on occasion who would be tempted to move to have a referendum calling upon the government to use the "notwithstanding" clause?

M. Guy Matte : C'est une excellente question. Il est certain que lorsque nous parlons de référendums, il est toujours dangereux d'y avoir des initiatives qui pourraient diminuer ou réduire les droits d'une minorité tels que reconnus par une constitution. Surtout dans la Charte des droits et libertés, lorsqu'il y a une clause «nonobstant», il pourrait toujours être tentant, je crois, pour certains groupes de tenter de s'en servir ou d'influencer le gouvernement pour s'en servir.

1630

C'est pour ça que nous disons dans notre document que s'il doit y avoir des référendums sur un projet de loi ou pour qu'il y ait un projet de loi, cela doit se faire assez tôt dans le processus de façon à permettre aux partis politiques d'établir la quantité de négociations qui sera nécessaire pour trouver un projet de loi qui sera quand même rassurant au niveau constitutionnel et pourra répondre à la volonté de la majorité.

Cependant, comme nous le disons là-dedans, il devrait être exclu du projet de loi de l'Ontario, s'il faut aller dans cette direction-là, que l'on puisse présenter à la population des référendums qui toucheraient la constitution, la Charte des droits et libertés, la Charte des droits de la personne de l'Ontario et les droits des minorités. Ce serait inquiétant. Vous avez raison.

Mr Wildman: Basically what you're saying is that it should not be possible to have a referendum requesting the government to use the "notwithstanding" clause.

M. Matte : Oui.

Mr Wildman: We had a presentation made by your sister federation, the Ontario English Catholic Teachers' Association in which they acknowledged that the protection of the Charter of Rights and Freedoms in the Constitution is significant, I think, and they also acknowledged that if a question were passed that a minority felt abrogated constitutional rights, they would have recourse to the courts after the fact and that the courts could in fact declare ultra vires if it was injurious to the minority and to the Constitution. But they also stated that there are some questions that even if they can be rectified subsequently, would be injurious to the minority just in having the campaign and would be bad for society just by having a campaign around the rights of a minority.

For instance — I'll use a somewhat neutral one because of knowing where you're coming from — it might be possible that there might be a campaign around aboriginal rights, hypothetically, which might lead to, in the campaign, things being said that might be quite injurious to aboriginal peoples and to their communities and that this in itself would be bad for society. How do you respond to that kind of a position?

M. Régimbal : Ce que l'OECTA a présenté — cette idée qu'il y aura des séquelles après — est très réel. On peut regarder même suite au référendum du Québec, ce qui s'est produit dans la société canadienne ; il y a encore des séquelles qui n'avaient peut-être rien à faire avec la question elle-même mais qui ont opposé deux groupes, les deux groupes fondateurs. Aujourd'hui on ressent encore ces séquelles-là.

Lorsque c'est encore plus près de la maison, lorsqu'on parle des droits des francophones, des droits des autochtones et même des droits des catholiques, à ce moment-là

les séquelles pourraient être encore beaucoup plus dévastatrices.

M. Matte : Il y a suffisamment de problèmes sociaux à régler dans notre province qu'il n'est pas nécessaire de créer des situations qui vont polariser davantage les citoyens et les citoyennes autour de questions extrêmement sensibles pour lesquelles ils peuvent avoir des opinions mais pour lesquelles ils ne peuvent pas agir si ce sont des protections qui sont constitutionnelles.

Je pense qu'il faut protéger, il faut assurer que ces débats qui polarisent ne conduisent pas à un fractionnement de notre société. Il faut qu'on travaille encore ensemble sur les grands travaux sociaux que nous avons à faire dans notre province.

Mr Wildman : It would seem to me that your comments are very cogent. Mr Parizeau's statements on the night of the referendum about anglophones and so-called allophones in Montreal are exactly what you're talking about, and those sentiments and the cleavages that were produced in that are still there despite the fact that the side they were on won.

M. Beaubien : Bonjour, M. Matte et M. Régimbal. J'aurais plusieurs questions mais on n'a pas beaucoup de temps. On parlait de polarisation. Avec les débats qui se passent au Québec, pour les francophones qui demeurent dans le sud-ouest de l'Ontario dans un milieu anglophone — la situation au Québec n'aide aucun francophone soit en Ontario ou en Saskatchewan. Alors, je suis d'accord qu'il faut protéger les droits des minorités, soit des francophones ou toute autre minorité.

La chose qui me cause beaucoup de difficultés avec les référendums directes c'est la façon de poser la question. Quant à moi, la façon de poser la question est la situation ou le point le plus important du référendum. Ce matin un groupe nous faisant une présentation a suggéré que la Loi 8 devrait être abolie. Si le gouvernement qui sera au pouvoir à ce moment-là avait une décision à prendre, de quelle façon poseriez-vous la question aux gens qui votent ?

M. Régimbal : Premièrement, dans notre document on dit que c'est au gouvernement à se garder la responsabilité de l'énoncé de la question et non pas aux personnes qui sont en train de le faire. C'est notre première affaire.

L'autre affaire, la question de la Loi 8, touche exactement ce qu'on dit : le droit des minorités. C'est difficile de gagner un référendum sur le droit des minorités parce que la question de la Loi 8 concerne exactement ça, et je ne peux pas voir comment on pourrait en arriver à poser une question autre que, «Est-ce que vous voulez l'abolir ?»

M. Matte : Il est important que vous, législateurs et députés de l'Assemblée législative, gardiez la responsabilité pour l'ensemble du bien public. Lorsque la Loi 8 sur les services en français a été adoptée par l'accord unanime des trois partis politiques de la Chambre, je pense que ça a été, en tout cas pour notre communauté, un grand moment de l'histoire sociale de cette province où on voyait que des gens élus par une majorité anglophone acceptaient d'assurer des services dans la langue de la minorité.

Il faut que cette responsabilité, qui est la vôtre comme législateurs, soit maintenue au niveau de l'Assemblée

législative et du gouvernement. Il y a des points qui ne devraient pas faire l'état d'un débat public au niveau d'un référendum. Je l'ai dit plus tôt, ça polarise tellement une population que ça nuit au tissu et qu'on va sentir un plus grand nombre de gens se sentir ne pas faire partie de la société ontarienne et ce serait malheureux.

M. Beaubien : En tant que association qui représente une minorité, est-ce que la suggestion d'avoir des référendums directs dans la province de l'Ontario vous cause beaucoup d'inquiétudes, vous rend pas mal nerveux ?

M. Matte : Eh oui, beaucoup. D'ailleurs, c'est pour ça que nous disons au tout début du texte que nous préférons que l'Assemblée législative maintienne le pouvoir législatif, le pouvoir de faire les lois, de décider quels sont les projets de loi qui seront présentés à l'Assemblée législative et à la population et ne pas le laisser ouvert. Dès qu'on arrive dans des référendums, il y a des groupes qui vont, dans la population, prendre avantage de ce processus-là pour nuire à d'autres.

M. Beaubien : C'est ça.

M. Matte : Ça nous cause beaucoup d'inquiétudes. Mais si vous voulez le faire on ne pourra pas vous en empêcher. Au moins, si le gouvernement a l'intention de le faire, on ne peut pas empêcher que ça se fasse ; vous avez la majorité. Cependant, assurez-vous dans ce projet de loi de mettre suffisamment de garanties que ça n'ira pas nuire complètement au développement de groupes importants quand même pour le tissu social de cette province.

1640

Mr Bartolucci : Is that the reason why you put the 90-day limit on the garnering of signatures? Is that one of the safeguards you're talking about?

M. Matte : Vous savez, nous ne sommes pas des experts en référendums. Nous sommes des enseignants ; nous ne sommes pas des avocats. Mais comme citoyens et citoyennes on peut quand même lire ce qui se passe surtout chez nos voisins du sud et on peut voir que, tant qu'il n'y a pas une limite dans le temps pour recueillir des signatures — c'est-à-dire, ce serait quoi ? Qu'est-ce qu'on pourrait prendre ? On pourrait prendre un an, deux ans, trois ans pour une personne de se promener à travers toute la province de l'Ontario pour essayer de ramasser un nombre significatif de signatures pour mettre une question au référendum.

Je crois qu'il est important d'avoir un montant de temps raisonnable. Je suis d'accord avec vous cependant que s'il doit y avoir un projet de loi sur les référendums, il ne faudrait pas qu'il soit tellement restrictif qu'il empêche que les référendums soient tenus. Je veux dire, soyons honnêtes aussi avec la population. Mais en mettant un nombre limite de jours, je pense que ça garantit l'honnêteté et la transparence du processus.

Mr Bartolucci : Should there be any geographical restrictions or must signatures be gathered from all parts of Ontario, if it is a provincial referendum?

M. Matte : On n'a pas touché à ce domaine dans notre document. Il est évident que si nous voulions rendre plus restrictive la possibilité de tenir un référendum, si nous mettions des obligations régionales, des obligations géographiques, des obligations sur un certain pourcentage de la population francophone, anglophone, catholique, les

femmes, les hommes, on rendrait encore plus difficile la tenue d'un référendum.

Il faut qu'il y ait un équilibre entre la possibilité de tenir le référendum et les barrières qu'on va mettre dans son chemin pour que les questions idiotes ou des questions très unidimensionnelles ne puissent pas traverser. Mais il ne faut pas empêcher qu'on puisse poser des questions ou qu'il y ait des initiatives si on est sérieux dans le projet de loi. Il serait facile de bloquer et de mettre beaucoup d'embûches. J'aime autant qu'on n'en fasse pas.

Mr Bartolucci: I know you're from Ottawa and I know that you know many people in Sudbury and that you deal closely with people in Sudbury and throughout northern Ontario. If you don't have geographical restrictions attached to it, are you not then punishing those who live north of Parry Sound?

Mr Matte: And east of Kingston.

Mr Bartolucci: That's right.

M. Matte : Oui. Vous avez raison. Quand nous avons écrit ce document, nous avons débattu : est-ce qu'on devrait également mettre d'autres barrières, d'autres limites ? On n'en a pas mis, ce qui ne veut pas dire que nous, comme francophones, qui habitons surtout dans l'est et dans le nord, ne préférierions pas — nous préférierions évidemment qu'un nombre soit exigé également au niveau de la géographie.

Mais encore là je veux juste qu'on fasse attention à ce qu'on mette un nombre de barrières intelligentes mais pas un nombre de barrières qui empêchent le processus si un gouvernement veut vraiment tenir des référendums sinon, aussi bien ne pas avoir de projet de loi, ce qui serait notre première option.

Le Vice-Président : Comprenez-vous, pour la cause et les problèmes de la démocratie ontarienne, que les citoyens modernes ne répondent pas à des «issues» contemporaines ? Les membres des autres organisations présentent un autre point de vue concernant la nécessité des référendums parce que la démocratie contemporaine refuse de résoudre les «issues» d'aujourd'hui, les pensants.

M. Matte : Je comprends la question. C'est pour ça que nous présentons devant vous. Nous croyons que ce que le gouvernement présente est un document intelligent, c'est-à-dire qu'il pose une bonne question à la population, le document de M. Harris.

Un, nous comme organisation et nos membres avons un grand respect pour le travail difficile que les députés de l'Assemblée législative doivent remplir. Ce n'est pas facile d'être député et d'essayer de composer avec les différentes demandes qui sont placées sur vous. Ce travail-là, même si quelquefois nous comme association pouvons dire des choses qui peuvent être désagréables au gouvernement ou à l'opposition, à la base nous respectons le travail que vous devez faire au nom des citoyens et des citoyennes, comme nous vous avons élus.

Deux, je ne crois pas qu'il faille utiliser le référendum comme étant le seul moyen de répondre aux problèmes que vous avez posés. Il devrait y avoir d'autres façons d'assurer que la population aussi va pouvoir exprimer son point de vue sur des sujets importants de l'ordre du jour autre que par la polarisation des idées, et je vous donne un exemple, des choses comme au niveau local : les bear

pit sessions dans vos circonscriptions, c'est important d'en tenir avec la population de façon à ce que, quand vous êtes chez vous ou que vous êtes dans le nord, vous invitez la population à se présenter et à parler sur un sujet important.

M. Lalonde, le député de Prescott et Russell, à l'heure actuelle fait un débat semblable dans sa circonscription au sujet des travailleurs du Québec qui viennent travailler en Ontario alors que le contraire n'est pas possible ou est très difficile. Je pense que c'est un débat important dans Prescott et Russell et il le favorise par la tenue de sessions publiques où on peut aller s'exprimer. L'important pour les gens c'est de pouvoir aller exprimer quelque part à son député ses frustrations ou ses pensées vis-à-vis une question importante. Il doit y avoir d'autres façons aussi.

Le Vice-Président : D'accord. Merci pour votre excellente présentation, et bonne chance.

CITIZENS FOR FAIR TAXES

The Vice-Chair: Now we're going to proceed to exercise teledemocracy again. We're going to a teleconference call with Frank Spink from Manotick representing an organization called Citizens for Fair Taxes. Are you ready, Mr Spink?

Mr Frank Spink: Yes, I am. Thank you for giving me the opportunity to speak to you today and to give you some thoughts on this move towards direct democracy.

In a parliamentary democracy such as ours, we select representatives to whom we delegate the authority to legislate and administer the government. Constitutionally, this authority is paramount and it cannot be usurped without the consent of those elected representatives. If we are dissatisfied with their performance, the only recourse is to turf the rascals out at the next election.

Democracy assumes that all electors are equal and have equal voice in the decision-making process, but unfortunately there is rarely, if ever, public unanimity on any given subject. Hence, those we elect must use their discretion in interpreting the will of the majority of their electors. They're subject to enormous pressures from special-interest groups, media and more vocal members of their own constituencies. This in itself is a recipe for dissension, and even Solomon couldn't please everyone.

1650

We believe very strongly that our system of parliamentary democracy and government, imperfect as it may be, is better than anything else yet tried. This is not to say that it cannot be improved upon, but we also believe we must be very careful when we tinker with it. There is potential for improvement but there is also a heavy risk that precipitate action can lead to unforeseen and quite undesirable consequences.

For this reason, we are very concerned that, once again, not enough time has been allowed between the request for input and the closing date for presentations. This is a large subject and a lot of people simply have not had the resources immediately at hand. It's also of concern to us that you have not given an indication of what follow-on action will be taken.

As you know, politics, politicians and bureaucrats do not enjoy much public esteem these days. This certainly

fuels a demand for more parliamentary democracy. It's difficult in today's climate to argue against those who feel that they are not well served by most levels of government, who therefore feel that they must take a more direct hand in decision-making. We understand that frustration but we do not share the view that greater citizen involvement in every issue will necessarily bring about better decision-making. It may, unless very carefully handled, result in paralysis or, worse still, anarchy.

We believe there is place for selective and limited use of citizen initiatives, plebiscites and binding referenda, but that their primary purpose should be to inform and to create checks and balances which will preclude abuse by government or bureaucracy.

There are a number of issues which arise in almost any discussion of government administration. Most of these should not require referenda to force change. The question is whether government will move without being forced. If this does not happen, then these issues will certainly come into force by referendum. Let me talk for a moment about some of these concerns.

There is too great a reliance upon enforcement of the party line rather than allowing a free vote on more issues. There is too little effort at real consultation and, more important, too little listening in what passes for consultation. There's too frequent use of time allocation to stifle debate in the Legislature. Frustrating as it may be to the government, we elected our representatives to consider and debate issues on our behalf. When governments stifle this, they are abusing the electors' rights.

Failure to recognize that the electors consider a party platform as a contract on which they have selected their representatives — failure to honour this contract is not viewed lightly, nor does election confer the right to move outside the bounds of that contract without obtaining a further mandate. This is one area where binding referenda might be particularly effective. The abrogation of rights and the denial of rights to appeal are a major concern to many. Neither legislation nor a referendum should ever allow this to happen. Secrecy and obstruction of access to information are major concerns to all who want responsible government.

The government can move to alleviate most of these without going through the complex time-consuming process of a referendum. Such action will not require the even more difficult and time-consuming process of making constitutional amendments.

Having said that we support the selective use of plebiscites and referenda, what constraints would we propose? First, no plebiscite or referendum should or could be used to absolve the government or the Legislature from its responsibility to lead, propose and enact legislation as authorized under the Constitution. We propose, however, that the government commit itself to call for approval by binding referendum of such legislation and that this would be a preconsideration to promulgation and implementation of such legislation which involves increases in taxes, borrowing or spending in excess of stipulated increase over current levels or the perceived reduction of the rights and freedoms of citizens. It would in no way absolve the government from the need to enjoy the confi-

dence of the House when debating any legislation which would normally constitute an issue of confidence.

We believe that demands for referenda should be limited to the absolute minimum in order to minimize frivolous demands or those lacking a minimum level of support. Some form of screening group would be needed to legitimize the acceptance or rejection of a demand for a referendum. This should be bipartisan and should include public representation. A second referendum on an issue previously rejected could not be held again within the term of the current government.

We believe that plebiscites offer a useful means of informing the government and the Legislature of public views on a variety of issues, but their use must not preclude informed debate in the Legislature. A mechanism needs to be introduced for an appropriate number of citizens to request that a plebiscite or a referendum be held on a subject and must provide means of excluding frivolous issues. It should require that any request for a plebiscite be considered in the Legislature and that there should be a public record of the consideration. If the plebiscite is placed on the ballot, the results of the plebiscite must be considered in the Legislature and there must be public record of such consideration. There must also of course be clear and consistent rules for the framing of the question, which must be short and unambiguous.

There are some other additional considerations on which we are not yet ready to take a position, but we do want to flag them for your consideration. First, the level of votes to pass a referendum would have to be question-specific. Approval of a major money item would require a higher level of support than, for example, the alteration of the boundaries of a municipality.

We have concerns about how the format of the question will be decided and how it will be tested. Recent experience shows that keeping the question simple, unambiguous and unbiased will be very difficult. We are concerned with what authority will supervise the education of electors prior to a referendum. What steps will be taken to ensure that all sides of the issue are presented to the electors in a fair manner? Will there be limits to the amount of public or private money which can be expended to support or oppose the proposed project and who may spend it? Who should be qualified to vote or take part? And how will disputes over the result of a vote be resolved?

In conclusion, the question of public participation in the process of government and/or legislation has many implications and interpretations. The paper *Your Ontario, Your Choice* is somewhat disappointing and in some areas superficial. We would have expected that the government, with its research resources and the experience, would have given more thought to this concept and brought forward more reasoned discussion of the advantages and disadvantages of a number of alternative approaches.

1700

The government was elected to provide leadership and guidance. You have recognized that the public wants more involvement and control over government action. You most certainly recognize that some of the administra-

tive problems inherent in direct democracy are formidable. Frankly, we think at this stage it's a bit of a copout. The government knows in general what the public wants. There's nothing new or unexpected in the concerns advanced previously. What is now needed and expected is a discussion paper setting out what you, the members of government, perceive to be a practical plan to satisfy these needs and to eliminate the alternatives.

Ladies and gentlemen, the public wants some checks and balances to keep the government within bounds. They do not want to do your job for you. Referenda may be necessary or desirable in some cases, but much can be done without them. Let us please see the government, the Legislature and this committee bring forward some reasoned and responsible proposals.

I thank you for your attention. I hope you'll find our comments helpful and constructive.

Mr Bartolucci: Mr Spink, because you're a part of Citizens for Fair Taxes, if there are going to be referendums, would you suggest that all tax increases be subject to referendum?

Mr Spink: I think my statement was that tax increases, spending or borrowing be limited to a specified amount above the normal figure and that anything in excess of that would require a further mandate by way of referendum.

Mr Bartolucci: In your estimation, are user fees a form of taxation?

Mr Spink: Very definitely.

Mr Bartolucci: Are they subject to referendum as well?

Mr Spink: At the local level, I presume that would be a reasonable approach to take. I'm not sure that every user fee necessarily justifies a referendum at the provincial level.

Mr Bartolucci: Let's talk about one user fee that's certainly of much public debate and of much public importance, and that's the user fee for seniors on prescriptions. Do you think that should be the subject of a referendum?

Mr Spink: I'm sure there are a number of people who will. I'm speaking purely personally at the moment. No. I am a senior, I'm on a fixed income, but I do not personally object to the application of the roughly \$6 fee at the present time.

Mr Bartolucci: With all due respect, Mr Spink, I'm not asking for your personal opinion as to whether you agree or disagree with the use of the tax; I'm asking, do you think it should be a matter for a public referendum?

Mr Spink: It's marginal. There are many who would think so; I personally don't.

Mr Bartolucci: Who decides then what is the subject of a referendum? If it's a marginal item such as you've just described, if the majority of or many seniors oppose this, how do you decide? Who decides if it should be the matter of a referendum?

Mr Spink: I think I said to you that an application for a plebescite or referendum should go to the Legislature and should be considered there. That provides the opportunity for those citizens who have a view on it to make their views known to their representative, and if the bulk of such views as passed through their representative goes

one way or the other, that I think is the intent of what you're trying to do.

Mr Bartolucci: Then there is no such thing, in your definition, as a citizen-initiated referendum?

Mr Spink: No, I didn't say that at all. I said that a citizen-initiated referendum should go to the Legislature for consideration. I believe that certainly if a strong case is made in either direction, the Legislature would respond to it. I do not believe that every time a small number of citizens, or whatever number of citizens, decides to put something on the agenda it should get there without some very careful screening.

Mr Bartolucci: Just a final question: What percentage of the population should the threshold be?

Mr Spink: I think you would have to make that question-specific. It depends entirely on what you are proposing to do. It depends on the applicability of it. For example, does it cover everyone in the province or does it cover a particular group such as elderly people or a local municipality, that sort of thing. That is one of the more difficult things which will have to be resolved in whatever legislation is brought forward to deal with this.

I will repeat what I said a few minutes ago: Damn it, we don't want to do your job for you. That's why we pay you people to come forward with some constructive suggestions. We do say, however, that if your suggestions are starting to get too far out of line, then we want some checks and balances. But, damn it, we want the government and the Legislature to do their jobs.

Mr Wildman: Thank you, Mr Spink. I think your presentation was quite well reasoned and put forward some interesting ideas. I agree completely with your last comment that members of the Legislature should do their jobs. They are elected, as Edmund Burke said, by their constituents to exercise their judgement. If they exercise their judgement in a way which is contrary to the wishes of their constituents, they must of course defend their position the next time a general election is called. I agree completely with that point of view. The fact that Edmund Burke was a Conservative and I am not of that persuasion doesn't mean I don't think he was correct in his philosophical interpretation of the role of a legislator.

Having said that, I am a little confused and I'd like you to clarify for me. Are you saying that there could be citizen-initiated referenda, keeping in mind that you've said they should be very limited, without the approval of the wording by the Legislature? Is that what you're proposing?

Mr Spink: In my comments I said something to the effect that the mechanism to set this up would have to be put in place and that there would have to be provision for agreeing upon the wording of the question. One of the problems certainly that you would find is that with citizen-initiated referenda there would be a wide range of wording that might be brought forward to you. There must be some mechanism for arriving at agreement on the wording of it. In that sense, I think you'd probably do that at the legislative level, but certainly with some input from the public. I'm not suggesting for a moment that the Legislature simply tear up the thing that's put in front of it and write its own version of it.

Mr Wildman: No, I understand what you're saying. That's helpful. I am a little concerned, though. Using the example that Mr Bartolucci raised, which you characterized in your opinion as marginal, if the government has taken a tax initiative like the user fee for prescription drugs for the seniors and disabled, has initiated that change in policy and implemented a new tax such as that, recognizing that the current Premier describes user fees as taxes, is it likely that those who might be in opposition to that new tax would gain approval for their question when it was submitted to the Legislature, which has a majority supporting the government position?

Mr Spink: This comes into the category I referred to when I said that it goes to the Legislature to legislate. If you go back to my words, I didn't say to "enact." I did say that if the government and the Legislature agreed on a course of action which involved money, taxes, borrowing, that sort of thing, prior to implementing they would have to go and seek approval.

1710

Mr Wildman: Oh, I see. I understand your position, but I'll just close off by saying I don't think that resolves the problem, because if the government has determined to do this, particularly if it were a marginal thing, as you describe this particular tax, it's unlikely that the majority in the Legislature would go against the wishes of the Premier and his government.

Mr Spink: That's entirely possible. However, what I said to you was that in that case you must seek the approval of the public by way of a referendum before you may implement.

Mr Wildman: Oh, I see. All right. Okay, I understand your position.

Mr Clement: Thank you so much for participating in our committee hearings. I wanted to start off by elaborating on a comment that was made in the document, the discussion paper that we are reviewing, which clearly indicates that the government does intend to proceed with some form of referendum legislation. I can assure you that we are going to act. The question is that we wanted some public discussion about what the terms of that piece of legislation should entail, and what are the pros and cons and how do we properly balance, as you have so appropriately put your mind to, the rights and responsibilities of legislators and the rights of citizens to initiate or decide upon matters that affect them?

I wanted to throw something at you, because we'd had a couple of presentations yesterday. I'm shamelessly paraphrasing; I do apologize that I can't repeat an hour's worth of presentation to you as a preamble. But the essence of their commentary and their critique of referendums seemed to be that individuals will always act selfishly upon issues of public importance and that that's why we need government to transcend selfishness and to act — and I'm putting it in the best way possible, given the fact that I'm biased against this point of view — for the public good, whereas individuals cannot do that, so we should not have referendums in place. I'd like your views on that, because I found that a bit disturbing in terms of the characterization of human nature, but I wanted to know how you felt about it.

Mr Spink: It's probably correct to say that some individuals will always pursue the personal objective. I think it is not a valid statement if you choose to take the citizenry en masse.

Let me go back for a moment to what I said before on the marginality of the question of fees for prescriptions. When I say "marginal" there, I say that because I believe if you went to a referendum with that the result would be very much in question. I suspect that you'd find a very large number of people who support it; I suspect that you'd find a very large number of people who would not. When I say "marginal," I simply say I don't think that one is clear-cut by any stretch until the votes are counted.

Mr Clement: Quite so. Perhaps I could move on to something you did talk about in relation to how best to have a public which knows why it is voting one way or the other. You mentioned the importance of public education. Let me just say I agree with you, but let me also say I have some reservations about the idea that it's government's role or the role of some committee that is financed by government to publicly educate on either side of the referendum. I guess my preference would be to see individuals who believe passionately on the issue fight it out in the court of public opinion. Am I going off in the wrong direction here? Am I properly characterizing what you wanted to see happen?

Mr Spink: No. I think government has a responsibility to make sure a clear picture is in front of the voters before they're asked to make a decision. It may well be — and in my view it is — preferable that education, as far as possible, be in the hands of those who propose or oppose the thing in question. I would not like to see a situation where some particular partisan group put on a very strong pitch and perhaps had access to plenty of money to support it; in essence, put on a very biased and one-sided approach to this thing and that this was allowed to go to the public without the other side being appropriately aired. That's why I said in one of my particular passages that both sides of the question should be fairly in front of the public. If that doesn't happen through the action of individuals, then there is a responsibility on the part of the government to bring some balance back into it. Again, this depends entirely on who is going to be allowed to spend money.

Mr Clement: Right. Now I understand you. So if we had a regime in place which would, as some have suggested earlier today, allow a right of access to media, a right of access to the means of disseminating their particular point of view, then you would have less concern and would feel less strongly that government should play an active role in education. Is that fair?

Mr Spink: I think government should play a role in making sure the picture is there. If it isn't there without government intervention, then I would favour some intervention by the government. But I would prefer very definitely that the government intervention be restricted strictly to keeping the playing field level.

The Vice-Chair: Thank you, Mr Spink, for participating in these hearings through teledemocracy. If you would like, we would appreciate receiving your views in writing. We will keep you posted as to the next chapter on the referenda legislation. This is, as Mr Clement said,

only phase 1. We noted your comments at the beginning as to where we're going. It's not just a matter of having an exploration or a consultation; there will be follow-up. Thanks once again for participating.

Mr Spink: Thank you, sir. I will send down to you a copy of my working notes. Obviously, if there are further questions that anyone wishes to put —

The Vice-Chair: It would be much appreciated. Thank you very much.

COMMUNIST PARTY OF CANADA
(MARXIST-LENINIST),
ONTARIO REGIONAL COMMITTEE

The Vice-Chair: We're now back to the next deputant on our list today, and that is Anna Dicarlo from the Communist Party of Canada.

Ms Anna Dicarlo: Thank you. I just want to correct you, first of all: It's not the Communist Party of Canada; it's the Communist Party of Canada (Marxist-Leninist).

The Vice-Chair: My apologies. I saw that in brackets.

Ms Dicarlo: The problems which have been presented in the consultation paper on the referendum alternative in our view are among the most pressing problems facing Canadian society at this time. The consultation paper acknowledges only superficially the dissatisfaction that's felt by people of Ontario presently about the political process that treats them like bystanders who have no choice but to watch as decisions are being made which affect their very existence and the kind of society they want to live in.

The consultation paper presents the referendum alternative as a mechanism to provide the electors with a means to participate in governing the society, as well as solving some of the problems with which this government, even though it's a majority government, has been plagued. This includes the problem of the perceived legitimacy of its decisions and problems of how to deal with differences of opinion which are presently being settled by the agencies of law enforcement. The consultation paper even presents the referendum as an alternative to the existing state of affairs.

1720

It is the opinion of the Communist Party of Canada (Marxist-Leninist) that the referendum alternative does not fundamentally address the basic problem which has beset politics, politicians, the political parties and the political process itself, not only in Ontario but in Canada as well. Nevertheless, if referendum legislation is to be introduced, then we would propose the following:

(1) Legislation should enable a referendum to be initiated by (a) the Legislature or (b) any citizens on the basis of 5% of the eligible voters signing a petition.

(2) The referendum, as the definition implies, must be considered binding.

(3) The conducting of referenda and plebiscites must not be conducted as a sales campaign for a government agenda.

Therefore, we would propose:

(a) Once the Legislature votes to hold a referendum, neither the government nor any political party represented

in the Legislature should be provided with funds to agitate for their positions.

(b) The electoral commission must provide an information package containing all the information relevant to the matter to be voted, distributed free of charge to all eligible voters. The information package should contain background information as well as full details on the impact of the legislation in question.

(c) The state should not fund the formation of a Yes or a No committee; ie, no Yes or No committees should be funded by the state.

(4) Referendum legislation must be part and parcel of legislation to renew the electoral process so that it empowers the people to elect and govern themselves if a real solution is to be provided to the lack of credibility of the present political process.

According to the consultation paper, the current political process works just fine when a majority government is formed on the basis of a choice being made by the electors between competing party programs; as long as the majority government does what it says it was going to do, then life will be fine, the public will be happy. The facts show that the case is otherwise.

When the current electoral process came into being, only men of property were entitled to vote. The electoral process suited the limited franchise in existence at that time. Elections were fought out on the basis of the competing interests within that very limited polity. While the polity today has grown to include all citizens of a certain age, the electoral process has not been modernized and renewed to reflect the existence of universal suffrage. As a result, the elections have nothing to do with the real complexity of interests that exist in the society.

The electoral process itself impedes debate and discussion about the competing programs and impedes arriving at decisions about what program will advance the general interests of the society. The political parties which dominate the electoral process with their competing programs comprise one of the tiniest segments of the society. Less than 2% of the Canadian population, all told, participate in political parties at this time, giving the broadest possible definition to what it means to participate. The electoral system, which is based on the electorate being provided with a choice of so-called competing party programs and competing candidates who are selected by political parties, has become anachronistic, and it is incapable of meeting the demands of a modern democracy.

The main flaw, the fundamental problem, with the existing representative democracy and its political process is that only a tiny élite can come to power because the process blocks the people from electing and governing themselves. A modern representative democracy must recognize the same rights and duties for all citizens. It must enable all citizens who are at least 16 years of age on the day of election to elect and to be elected directly without any encumbrances placed on the exercising of those rights. The electors have to be enabled to select and elect candidates and determine the agendas and the programs which are set during the elections. Both of these tasks belong to the entire electorate, not just political parties, as the case is now in law.

The prestige of politics, politicians and political parties has never been lower. Taking up the task of democratic renewal is what is needed to regain and restore the credibility of the political system. In the absence of addressing the fundamental block to democratic requirements, the introduction of referendum legislation will not solve the problem. If, on the other hand, referendum legislation is being introduced and proposed as a means for the government to garner unrepresentative votes for its own agenda, the credibility crisis will deepen even further and faster than is already the case. The use of referenda and plebiscites will not in themselves eliminate the serious crisis which is confronting the society at this time vis-à-vis the credibility and legitimacy of the political process. None the less, nothing less than a comprehensive package of legislation that will enable all citizens to exercise their right to elect and to be elected can do this.

Mr Wildman: I'd like some explanation here. You say in 3(a), recognizing that you don't think referendum legislation will resolve the problems as you perceive them, if there is to be referendum legislation, "Once the Legislature votes to hold a referendum, neither the government nor any political party represented in the Legislature should be provided with funds to agitate for their positions." Would that also apply to all political parties?

Ms Dicarlo: Yes. We're speaking generally that there should be no state funding, particularly for the government of the day or for political parties within the House. But at the same time what we're saying is that there should be really no campaigning as such, no campaigning as we know it. If you look at the Quebec legislation, which you must know, the government funds a Yes side and a No side.

Mr Wildman: I understand that. I was asking a wider question.

Ms Dicarlo: Funds shouldn't —

Mr Wildman: Shouldn't go to any political party. There are a number of registered parties in Ontario that are not represented in the Legislature. So they should not be able to be recipients.

Ms Dicarlo: No, and I would argue even further and say that no public funds should be spent on campaigns, other than one main piece of information, or several pieces if, as the referendum goes on, there's a requirement for more; that is, simply straightforward information, without the electorate coming under any kind of what we call marketing pressure, as you saw in the Charlottetown accord, where people were scandalized that millions and millions of dollars could be spent to try to tell them what decision to make.

Mr Wildman: I just have two other questions. Who would provide this information? Would it be the proponents and opponents themselves, and how would they be organized if you weren't allowing campaigning?

Ms Dicarlo: The concept is that there would be no proponents or opponents. The concept is that if there's a piece of legislation, then the electoral commission, an independent body — in this case, I suppose we're talking about the provincial Elections Ontario — would be entrusted with preparing an objective package of informa-

tion for the electors covering all the aspects of that legislation. For all the background information that they require, they would go to experts, they would go to whoever they need and just simply, objectively give the electors the information they need. Speaking as an elector, I don't need some politicians to come and tell me how to make my decision.

Mr Wildman: All right, I understand your position. I'm just trying to understand how the logistics would work. How would the information, once prepared, be disseminated?

Ms Dicarlo: I would suggest door to door to every eligible voter. If you recall, during the Charlottetown accord, that was one of the problems that happened. I think the government at first printing only printed 15,000 copies, because they really didn't think that Canadians were going to want copies, and then the 1-800 lines were absolutely jammed and people were calling every day asking for copies and they finally had to get around to doing a complete run that went door to door to everybody.

Mr Wildman: I recognize that, but I would just posit that perhaps part of the reason for the great interest was the campaigning that was going on that raised the profile of the issue.

Ms Dicarlo: I think that's true, because people were saying: "This is really ridiculous. They're telling us we have to vote about this, but they aren't telling us what the package of information is. They're simply telling us that if we don't vote Yes, the country is going to fall apart. Let's read what this actual Charlottetown accord says."

Mr Wildman: If there had been very little campaigning, as you suggest, no campaigning, perhaps there wouldn't have been as much interest.

Ms Dicarlo: I guess that's a judgement call, a speculative kind of thing. If you're saying we have to get — "we" being people who are not in the Legislature — incensed before we take an interest, I think you're wrong. There was quite a high level of interest, because the Constitution struck a chord with a lot of Canadians.

Mr Wildman: It's the fundamental law of the country. 1730

Mr Clement: Ms Dicarlo, do you believe that there are any institutions of authority in Ontario that are legitimate?

Ms Dicarlo: Everything is legitimate. There's a Constitution, there are laws. You mean that enjoy legitimacy in the eyes of the people?

Mr Clement: Yes.

Ms Dicarlo: I can't think of any. It's not a matter of my opinion. If you go by the Royal Commission on Electoral Reform and Party Financing, which spent \$22 million of our taxpayers' money to find out what Canadians thought about the electoral process, political parties and political institutions were way, way, way down on the list; they were just below trade unions and banks. So it's not a matter of my opinion, really. You know, Ontario — I don't think the situation is any different in any other province.

Mr Clement: How can we, then, entrust some form of authority with disseminating the objective truth, and how can we entrust the government or the institutions derived

from government with creating an atmosphere that would lead to a legitimate result in a referendum, under your suggestions?

Ms Dicarlo: I think the starting point is to obstruct the use of money. That's one of the main problems that we encounter, whether it's in the elections or in the referendum, that people in the society who have lots of money and who want to see their agenda imposed on the society have the resources at their disposal to do so. The electoral laws put certain limits, but we all know those limits are big, big, big limits that allow huge amounts of money to be spent.

As a starting point, if we could just start with that, that finances, especially state finances, can't be allowed and that no other kind of campaigning with the aim of marketing — and I know it's a subjective area, what you call marketing and what you call somebody simply giving their opinions. If we could eliminate that from the realm of political discussion in the society, it would go a long way towards the substantive issues being discussed by people.

Mr Frank Klees (York-Mackenzie): Do you believe in the principle of freedom of speech?

Ms Dicarlo: Absolutely.

Mr Klees: I'm just interested in how you reconcile that with what is obviously a prohibition against individuals or organizations pressing their view or advertising their view, marketing their view, if you will.

Ms Dicarlo: We haven't proposed anything in that regard. What we're saying is that state funds shouldn't be used for that purpose.

Mr Klees: So it's okay for —

Ms Dicarlo: If GM wants to spend \$1 million of its dollars to convince people that they should do something, we live in a society where that's considered acceptable, but it's quite different when the state itself, through taxpayers' money, through tax refunds and so on, is subsidizing this to take place.

Mr Klees: So it's okay for any other organization to market, to press the issue, but not for the state and for the elected people who have been given the responsibility to communicate effectively and to uphold the rights of the individuals; they are gagged under your proposal.

Ms Dicarlo: They would definitely be gagged under this proposal, yes.

Mr Klees: Interesting. It's an interesting view of the world.

Ms Dicarlo: We can look at what actually takes place. It's more frequent than not that rather than dispassionate discussion taking place, agendas are set and the agendas are rammed down people's throats.

Mr Klees: But it's okay for —

Ms Dicarlo: You're the one who's saying it's okay for these things; I'm saying that if the government wanted to, if the government had the interest of raising the level of political discussion in the country by publishing, simply saying, "Okay, we're not going to have any marketing campaign; we're going to try to discuss the substantive issues and provide all the background information," then, quite frankly, if GM spends \$1 million, at least the citizens in the province will know what's involved. So that publicity campaign, that campaigning, loses its

relevance once the people in the society are equipped with all the facts.

Mr Klees: But doesn't discussion imply an exchange of information and a dialogue?

Ms Dicarlo: Exactly.

Mr Wildman: Even disagreement?

Mr Klees: Disagreement, and through disagreement you sharpen your ideas and you come to compromise. But you're suggesting that this shouldn't be allowed.

Ms Dicarlo: No, I'm not suggesting that; I'm suggesting that what the government does at this time — the experience of Canadians with referenda to date has been that the opposite takes place. I can go back to the Charlottetown accord, where I very actively participated on the No side, and what I found is that, inescapably, wherever people got together, very, very serious, substantive discussion took place. But what we were seeing on the television, what we were seeing in the government's little brochure, what we were seeing everywhere else was the exact opposite. It was really against all the odds. If you recall, the banks, the trade unions, every single political party in Canada, they all got together to say Yes. You must have seen the figures on how much money they spent. It was scandalous. But where people were able to get together, at the all-candidates' debates, wherever the discussions were organized, then people were having very serious pros and cons, as you put it, and it was by no grace of the marketing campaign that took place.

Mr Bartolucci: Ms Dicarlo, thank you very much. Just a follow-up question to Mr Klees's. There should be no limits at all to the amount of money a private person or corporation can invest in a campaign. Is that what you're saying?

Ms Dicarlo: My opinion is that until you have a comprehensive package of electoral reform, then I don't think you could introduce referendum legislation, and without changing the whole way that finances work in the political process in a broader picture, I don't think you could introduce that kind of legislation.

Mr Bartolucci: Presently, is there any time where you feel a referendum should be held?

Ms Dicarlo: I think they should be held, as we're proposing, wherever there are citizens who have the initiative to propose them. I've been watching the situation in BC. It's a bit onerous, the conditions they've put there, and it's going to be interesting to see whether people can actually make use of that legislation. We're proposing 5%. We think that's a bit more realistic. Especially given that a government can do whatever it wants on the basis of 28% of the eligible voters, 5% for some citizens doesn't seem to be —

Mr Bartolucci: Should there be requirements geographically, then?

Ms Dicarlo: I think if it was really well-worked-out legislation, then it would have to specify that if the issue in question specifically affects one region, for example, of the province, then there would have to be requirements that take it across, and in other cases, where it's general legislation that doesn't specifically affect some area of the province, that 10%, period, would be fine.

Mr Bartolucci: Over the course of the last 14 months, the government has obviously made changes. Their mandate, they say, in the Common Sense Revolution was to make changes. Of the changes they made, which ones do you think should be subject to referenda?

Ms Dicarlo: I think the omnibus legislation should be, the reason being that there was very significant opposition. I think this is one of the most critical problems that's taking place right now, that even though the government has a majority, there's very, very definite opposition to what the government is doing. We don't have any means at our disposal — I'm saying "we" as a society — there are no mechanisms in place for when these very serious differences of opinion take place, what

should be done. For the government to make use of things like plebiscites and referenda and so on, I think it would be very wise to do so if it's seriously for the purpose of soliciting the opinions of the people. If it's for the purpose of building public opinion for what it wants to do, I think it will be a disaster.

The Vice-Chair: Thank you very much, Ms Dicarlo, for coming before us today and making your views known. We'll keep you posted as to what happens in this evolution.

Before I adjourn, I remind members that we start tomorrow morning at 9:30 am. I declare today's meeting adjourned.

The committee adjourned at 1739.

CONTENTS

Wednesday 11 September 1996

Referenda	M-283
Freedom Party of Ontario	M-283
Mr Lloyd Walker	
Mr Robert Metz	
London-Middlesex Taxpayers' Coalition	M-288
Mr Jim Montag	
Mr John Hogg	M-292
Mr Greg Vezina	M-295
Democracy Watch	M-300
Mr Duff Conacher	
Association des enseignantes et des enseignants franco-ontariens	M-305
M. Roger Régimbal	
M. Guy Matte	
Citizens for Fair Taxes	M-308
Mr Frank Spink	
Communist Party of Canada (Marxist-Leninist), Ontario Regional Committee	M-312
Ms Anna Dicarlo	

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)

*Mr Rick Bartolucci (Sudbury L)

*Mr Dave Boushy (Sarnia PC)

Mr David S. Cooke (Windsor-Riverside ND)

*Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Tom Froese (St Catharines-Brock PC)

*Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Mr John Hastings (Etobicoke-Rexdale PC)

Mr Ron Johnson (Brantford PC)

Mr Frank Miclash (Kenora L)

*Mr Gilles E. Morin (Carleton East / -Est L)

Mr John R. O'Toole (Durham East / -Est PC)

Mr Tony Silipo (Dovercourt ND)

Mr R. Gary Stewart (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Jim Brown (Scarborough West / -Ouest PC) for Mr Ron Johnson

Mr Marcel Beaubien (Lambton PC) for Mr Stewart

Mr Tony Clement (Brampton South / -Sud PC) for Mr O'Toole

Mr Bud Wildman (Algoma ND) for Mr Cooke

Also taking part / Autres participants et participantes:

Mr Frank Klees (York-Mackenzie PC)

Mr Chris Stockwell (Etobicoke West / -Ouest PC)

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service



M-21

M-21

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Thursday 12 September 1996

Journal des débats (Hansard)

Jeudi 12 septembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Thursday 12 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 12 septembre 1996

The committee met at 0934 in room 151.

REFERENDA

The Vice-Chair (Mr John Hastings): I bring this session to order. I believe Mr Wildman has a request to go into internal consideration.

Mr Bud Wildman (Algoma): I would like to go in camera for a very short period.

The Vice-Chair: Agreed? Okay, proceed.

The committee continued in closed session from 0934 to 0941.

CITY OF SAULT STE MARIE

The Chair (Mr Ted Arnott): We are continuing our discussions on the issue of referendums and we have with us this morning Mayor Steve Butland of Sault Ste Marie. Welcome to our committee. We look forward to your thoughts and your presentation.

Mr Stephen Butland: I hope so. I'm glad to be here, but it certainly is under some duress. I will say that. I appreciate the opportunity.

First of all, I have a brief that I've presented to the clerk. This was put together by a group of people at city hall in Sault Ste Marie in about a 24-hour period. I've proofread it. I've read it several times and to say that I am 100% in favour of everything that's said here would not be correct, but I am 99% in favour. There are a few things here that perhaps I would word differently.

There seems to be an anti-Toronto bias and I don't think that was meant to be in the brief. I think I would present it as a southern Ontario-northern Ontario differential rather than a continual reference to Toronto the Bad. It seems to portray Toronto as being a bad place to be. That would not be my preference. Nevertheless, the thrust of the brief presented is certainly, I think, the general thought of the community of Sault Ste Marie and, correct me if I'm wrong, Mr Bartolucci, perhaps northern Ontario as well. Of course, that remains to be seen.

It's good to see some folks I know here. It makes it a little bit easier to come before a committee.

The concern I had is that I read about these committee hearings in the Toronto Star in Sault Ste Marie. I was surprised to hear that there were committee hearings being held on referenda. I called the committee clerk and it was indicated to me that all positions were filled and I would not be able to come before you. That was somewhat disturbing. I indicated that we thought we had a stake in these hearings and I was pleasantly surprised the following day that I received a call indicating that time was available today. So I thank you, but at the same time

I'm somewhat disenchanted that if indeed this is a consultative process, it seems to be lacking.

I'm relatively new on the mayoral scene, but our community received no advance notice that committee hearings were being held. I cannot speak for the rest of northern Ontario, but it seems strange that the city of Sault Ste Marie would not receive an official notice. I was talking to a friend back here who suggested that it was in the Globe and Mail as an official notice. Not everyone in Sault Ste Marie reads the Globe and Mail.

Mr Wildman: Thank God.

Mr Butland: Agreed. Not everyone reads the Toronto Star, but I do every day.

Mr Wildman: Nobody reads the Sun.

Mr John Hastings (Etobicoke-Rexdale): Just for the sports.

Mr Butland: We don't get the Sun.

I'll make a few random points and then perhaps — I know how boring it is at committee hearings just to be read to, but I'll certainly read some excerpts.

Mr Hastings: It's not boring.

Mr Butland: Thank you. You haven't heard it yet.

First of all, it was a bit of a scramble to put this together. I understand that the Association of Municipalities of Ontario is not making a presentation. Is that correct?

Mr Rick Bartolucci (Sudbury): That's correct.

Mr Butland: That seems also to fly in the face of the interests of municipalities in this province. I would hope that the invitation was extended to them and I would have hoped they would have taken that on. As I say, I'm speaking for the city of Sault Ste Marie. I'm hoping that it goes beyond the borders of Sault Ste Marie to some of the rest of northern Ontario at the very least.

Your Ontario, Your Choice: The discussion paper really is a good starting point for anyone who wants to bring forth his concerns. I have to admit I pulled excerpts from the report and I have to agree with many of the things the Premier has said with regard to referenda. I have to admit that my spin, if you want, on some of the things he said is probably totally different from what the Premier has suggested.

He has said, "Certain questions of public policy, such as those related to constitutional amendments, the expansion of casino gambling in the province and new provincial taxes are so fundamental that they should be decided by using referenda." But I suggest there's a big difference between constitutional amendments and tax increases and, separately, casino referendums.

Mr Harris says, "We believe that individuals should decide their future. In turn, the function of government

should be to serve and facilitate those aspirations, not to rule or constrain them." We agree with the Premier.

The discussion paper says, "Most problems could be solved if decisions could be brought back to the people at the grass roots." We agree.

Of the questions at the back of the consultation paper, I want to highlight, and I think it has to be answered by this committee. Should questions with a purely regional impact be decided by people living in that region or by all Ontarians? We in Sault Ste Marie believe that they should be decided by region because certain questions, such as a casino in Sault Ste Marie — I'm not so sure that the people in Peterborough are so concerned about a casino in Sault Ste Marie, and if Oshawa has already decided no in a referendum, I don't know if it is necessary to consult them once again.

I don't have to remind you that the populations of northern Ontario and southern Ontario are very disparate, probably 10 to one. I put forth the hypothesis that should all of northern Ontario vote 90% in favour of something or against something, indicating a strong will of the people, that vote in such a referendum could easily be overturned by the greater Toronto area. We say that is not democracy; in fact, that is the antithesis of democracy.

There are regional variations in the province on specific issues addressing concerns that pertain to southern Ontario, not always reflective of the best concerns of northern Ontario.

Province-wide referenda on issues such as casinos is an example of where communities with no interest in an issue are determining the fate of huge economic development projects for other communities. Cross-border communities that are losing millions of dollars in revenue to their American neighbours should be allowed to compete for tourism dollars, as well as stem the flow of Canadian dollars out of the community.

0950

The brief, I have to admit, has a casino bias, but we were told by the previous government that a referendum would be in order. This government seems to support the concept of referenda. We do not disagree. We've held a referendum, and the Minister of Economic Development, as well as the Premier, is now saying, "We look to have a province-wide referendum before any more casino decisions are made." We humbly suggest that should not be, that it is not an appropriate action or decision to make.

It is very difficult for people in southern Ontario to appreciate what Sault Ste Marie, Ontario, is going through. Most people in southern Ontario do not appreciate the unique circumstances affecting those in northern Ontario, and we in Sault Ste Marie say our circumstance is just a bit different from even other people's in northern Ontario, as I'm sure Sudbury would say they have different circumstances.

We think we've had the referendum in our situation. It has passed significantly Yes to the decision, and the circumstances are such that we are a border community. We have five casinos within an hour's drive of our community. The community that is — I don't want to exaggerate — not 10 minutes away from us is a \$300-million-a-year business. They're doing very well. We

have seven stretch limousines making the round trip 24 hours a day. We have buses, loads of people on many buses crossing the bridge every day, seven days a week. It is a drain on our economy. Forgive me if I stray, but all this is related to the referendum issue. We believe that the referendum held in Sault Ste Marie should be a binding referendum on this government. It is the will of the people, and again I bring forth the comment, not to denigrate anyone, but just to suggest many others in many areas of Ontario may not appreciate the specific circumstance.

Our paper indicates that on certain issues referenda are good things if they impact all people in Ontario. But certain issues may have to be decided on a — call them what you will — plebiscite or referendum, with regional considerations taken. I believe, and it crosses my desk every day, the "who does what" committee, and the thrust of the government seems to be — doesn't seem to be; it is — that more and more jurisdiction as to the affairs of the municipality will be in the hands of the municipality. "You must take on more and more responsibility." If that is the case, then why would the referendum decision that Sault Ste Marie took, and perhaps other communities on other issues, not be consistent with the philosophy of the government?

If I may turn to the brief itself, I should like to begin to read a few things.

It appears that the province, as a result of this "who does what" exercise, will end up dividing responsibilities and issues into two different categories: (1) those which need to be uniformly applied across the whole of the province with the same standards for all municipalities; and (2) those which need to be decided by local governments because of the peculiar circumstances of the community, with due regard to specific needs, wants and abilities.

In either of these categories the use of a referendum will provide an excellent tool for government to do what is right. However, it will be important that it be recognized that such a referendum be province-wide only if it is intended that the outcome will help guide a province-wide application. The referendum should be local only if it is not intended that there be a province-wide application.

For too many years now, municipalities outside the greater Toronto area have strongly believed that all of us are driven by greater Toronto area concerns. If Toronto coughs, we all have to take the cough medicine. Many local politicians outside of the greater Toronto region have complained bitterly over the years that many legislative changes in the past, which have province-wide application, have been the result of Toronto-area-only problems and actually have hurt or cost the rest of the province unnecessarily. The actual value assessment decision that has come down I believe is to address a concern perhaps across the province, but those of us who have undergone market value assessment already and are more or less up to date say this response is not necessarily applicable with the same import as it is to southern Ontario.

It's interesting to note the proliferation of VLTs and charity casinos. There was, it seems, no discussion

whatsoever as to a referendum dealing with those gambling issues, and I suggest there is a proliferation of both. If you are espousing the fact that gambling is an acceptable way of raising funds in this province for charity or for others, why would a referendum not apply to those as well? Why restrict a community that has had a referendum on a casino, should we have a full-fledged casino, as we have called it, where it is a controlled environment, much more controlled than the charity casinos in this province, where I understand there will be as many as 40 of them? Everywhere I drive in Toronto I see a charity casino, and there was no thought, I think, to consultation on those.

Why restrict a municipality that has held a referendum on an issue that is of very grave importance to us? Why would the province hold us at ransom until such time as the next municipal election or, even worse, the next provincial election? We've been on this course now for about three years. No one has said no to this point, but only very recently we were again reading the newspaper perhaps to read the bad news that the provincial referendum is the way the province will be going.

I encourage this committee to make our concerns known not only on the casino issue but also on the referendum issue. I believe this is detrimental to the best interests of northern Ontario. The disparity, I repeat, between northern and southern Ontario in nearly all ways is too enormous to suggest that a referendum will be a democratic decision on behalf of the people not only in Sudbury and Sault Ste Marie but in all the small towns and villages across the expanse of northern Ontario.

I beg you to consider individual circumstance, regional differences, regional concerns. I encourage you to recognize the referendum already held in Sault Ste Marie. It is the will of the people. Please, as the Premier has said: "Do not constrain our aspirations. Our decision has been made."

I hope that the entire brief will be a matter of record for the committee. It certainly makes other pertinent points to the entire issue of a referendum in this province, but it also highlights our casino initiative.

1000

Mr Bartolucci: Welcome, Steve. Thank you for the excellent presentation on short notice. Maybe you should inform the committee how overwhelming the referendum was, and I don't care whether you call it a plebiscite or a referendum; it was clearly the choice of the people that there be a permanent, full-time, real casino established in Sault Ste Marie. You might want to give some of the statistics.

Mr Butland: Rick, it depends on what you consider overwhelming. It was 60%, not unlike the city of Windsor, I believe not unlike Niagara Falls.

Mr Dave Boushy (Sarnia): Sarnia was 80%. In my riding, 80%.

Mr Butland: Are you from Niagara Falls?

Mr Boushy: Sarnia, Point Edward.

Mr Butland: Okay. Some would say it is not overwhelming. I believe, Rick, since the referendum has been held, the anti-group has ceased and desisted. I think the drain of moneys into Sault, Michigan, is hurting us dramatically. I have to admit that I personally am not a

great fan. I would rather have other economic development but I think it has become a necessity for our community. I hasten to add that Sudbury, North Bay, Timmins and Thunder Bay are all on record as supporting a casino in Sault Ste Marie. They're not saying, "We want one too"; they're saying, "If there has to be a casino in northern Ontario, it should be in Sault Ste Marie because of the border situation."

Mr Bartolucci: Clearly the support in the community and throughout northern Ontario is overwhelming. You bring an interesting dilemma to us because the people of Sault Ste Marie have spoken: their city, their choice. If the title Your Ontario, Your Choice is to reflect the will of the people, do you suggest that legislation be written so that the clear choice of the people of Sault Ste Marie is honoured?

Mr Butland: That's a very good rhetorical question, and I agree with everything you said. Perhaps the legislation should deal with referenda on a local or regional basis rather than them just being, "Thank you very much for your opinion"; perhaps some binding legislation as to local differences.

Mr Wildman: I'm glad that the committee was able to make arrangements, although the committee did decide that if there were a need for further hearings after the House has sat, there would be further hearings.

Mr Butland: If I insulted anyone with my preliminary statements, I apologize. I was not aware that there would be further hearings.

Mr Wildman: They haven't been scheduled, but the committee did decide that if there is a need, we could have further hearings.

Mr Bill Grimmett (Muskoka-Georgian Bay): We don't insult easily.

Mr Butland: I've been in the business. I'm glad you took it that way.

Mr Wildman: You've raised two matters that are related. If I could, I would like to deal with the overall question of referenda prior to asking you a question specifically related to the casino situation in Sault Ste Marie. I've looked through the brief, and I agree with you that it does have an anti-Toronto bias which I don't think you intended and certainly would not be my position. But Mr Bartolucci and I raised the issue yesterday of defining democracy as majority rule but also protection of the minority. Those of us from northern Ontario know that we have about 9% of the population of Ontario across 80% of the land mass and a wealth of resources upon which the economic wellbeing of this province is largely dependent. You're quite right, 90% of northerners could vote one way in a province-wide referendum and be completely swamped by Metropolitan Toronto and/or Ottawa-Carleton if they were to vote overwhelmingly the opposite. This is a problem.

I want to raise with you an example I read about in the press and I've raised before this committee before. In British Columbia, where they do have legislation on referenda — and it has been criticized in this committee because it is difficult to get the required number of signatures there to have a vote — there is a group initiating a referendum on whether or not bear hunting should be prohibited in British Columbia. I would

guess — I don't know this for certain — that many of the people in the group that is sponsoring this proposal might be from Vancouver and many of the people who might be directly affected would be in the interior of British Columbia, if the referendum were to be held and passed. In British Columbia, however, there is a requirement that to get the referendum brought forward they have to have a certain percentage of signatures from every constituency. If there were to be province-wide referenda in Ontario, would you favour the requirement that signatures on the petition to hold one first would have to be obtained from all parts of the province?

Mr Butland: That's a pretty far-reaching question. No, I don't. This is the difficulty with coming before you this morning. If you'd asked me five years ago; I just threw out a stick. In a previous life and a different political role, I did considerable research on referenda. I chose to chuck it away because I thought, "Mr Manning is not going anywhere and I don't have to research referenda any more." I still believe that part about him not going anywhere — that's a political statement — but perhaps I should have kept my referenda research. It came to me at that time that I probably was against referenda in general.

When you talked about bear hunting, I don't know if I can relate the bear-baiting question in northern Ontario. I can imagine asking someone in this area, "What do you think about bear-baiting?" I would ask some of you: "What do you think? Are you in favour or agin it?" That would be a tough one.

Mr Wildman: I would think in Metropolitan Toronto there would be a lot of people who would be very upset about bear-baiting, and I would think in my riding — as a matter of fact, I know in my riding — there would be a lot of people who would say that's the only way to hunt bear, and you better hunt bear because it attracts tourism dollars, and there are lots of bears.

Mr Butland: I think the point is made that there are certain issues that just do not pertain to all of Ontario.

1010

Mr Wildman: Just one other question, which deals specifically with the casino matter: Sault Ste Marie held a referendum, as many other communities hold referenda, on casinos; some rejected, some voted in favour. Niagara Falls held one and voted in favour. This government decided to establish a casino in Niagara Falls. Subsequently, the government stated that any further casinos, other than Niagara Falls and Rama, would be subject to a province-wide referendum, somehow then discounting the referenda that were held in Sault Ste Marie or Sarnia. It's your view that local decision-making should be respected by the government, is it not? If so, have you had any indication from the provincial government that the local decision-making in Sault Ste Marie will be respected, or is the Sault going to be subject to a province-wide referendum on casinos at some future date?

Mr Butland: I can honestly say we've received mixed messages, none of them directly indicating a no. Just two weeks ago, we met with the Minister of Municipal Affairs. He said: "I support this initiative. I particularly support border casinos. I'm in your corner. I will bring it to cabinet on your behalf and I will arrange meetings for you to meet with the other three ministers."

Mr Hastings: Mayor Butland, thank you for coming down and making your views known. As you may not be aware, this committee has been grappling with the sensitive issue of how you could structure regional initiatives into a referenda strategy or legislation, if that's the route we go ultimately. I would like to know from you how you see regional initiatives being structured in such legislation, should we go that route.

If you don't have any specifics, I'd also like to ask you whether you were aware that there was correspondence between the Premier and your predecessor regarding the casino as late as December 8, 1995, in which letter the Premier expressed that the issue of referenda would be coming before a standing committee of the Legislature. Legislative Assembly was not specifically referenced, but it was certainly probably intended that it would be the committee that would hold these hearings.

Finally, as you may not be aware, this committee has undertaken to go beyond the Toronto milieu without travelling, through telephone and teleconferencing out to British Columbia. We could probably still do that or travel — no options are closed — to get further views from other parts of the province. Furthermore, this committee, not through the clerk but through the party caucus, attempted twice to get AMO to make representations, and neither time were phone calls returned. I just wanted to put those items on the record.

My primary concern relates to how you would see referenda legislation encapsulating regional initiatives or issues so that this swamping wouldn't occur.

Mr Butland: I appreciate many of your comments. I can't say I'm disturbed, but I'm surprised that AMO would not respond. I think they act as our parent for all municipalities and I would hope that they'd — but then, again, perhaps they're aware that the hearings will continue. I'm assuming that. I didn't; I'm assuming they did.

As far as your regional initiatives are concerned, I'd be foolhardy to make suggestions. I have made no study on that whatsoever. I had no idea prior to 24 hours ago that I was coming here. I just would not comment.

As to being aware that the Premier had corresponded with my predecessor, yes, totally aware, and also aware of his statement re referenda and casinos. But at the same time, the Premier has written me not indicating that same intent. Okay? So, as I say, when the Minister of Municipal Affairs says, "I'm in your corner" — also, in speaking to several other people, the answer does not seem to be a definitive no. The Premier is coming to Sault Ste Marie on October 10. I suspect he will make some statement at that time.

Mr Hastings: Could you go back and re-examine and give some thought to how you could structure, handle the regional issues through referenda and send some material to the clerk? Because this thing's not going to end as of today.

Mr Butland: All right. I appreciate that thought and I certainly would give you my undertaking to offer our humble opinion on it.

The Chair: Thank you, Mayor Butland, for your presentation.

ANDREW STAPLES

The Chair: Our next witness and presenter is Andrew Staples. Welcome to the Legislative Assembly committee. We are interested in your advice on referendums.

Mr Andrew Staples: Unlike Mr Butland, I am going to try to stick a little bit more to the text that I prepared. For those of you who have had a chance to look at it, it is, I hope, in a slightly more conversational form.

My name is Andrew Staples. I'm a doctoral candidate in political science at the University of Toronto. I'm also a member of the Law Society of Upper Canada and thus, by designation if not by occupation, a lawyer. I'm not speaking to you as a member of either of those august organizations today, but rather as a concerned fellow citizen of Ontario.

My friend and colleague Darin Barney, also a doctoral student in political science at the University of Toronto, had a chance to speak to you on Tuesday about some of the problems contained in the position paper on referenda. I believe those to be important criticisms and worthy of this committee's consideration.

My task this morning is slightly more modest. I will try to point out some of the constitutional difficulties that I believe arise from the referenda proposals contained in the position paper. My main contention is that for the majority of cases, and particularly for the initiative process, the Canadian Constitution in its present form may very well prohibit the kinds of reforms contemplated in the government's position paper. Although the law is quite murky, the Constitution prohibits certain kinds of consultations simply because of the way in which they become law and it prohibits other types of consultations because of the subject matter of the referendum itself. In other cases, the proposed referendum may simply be beyond the authority of the province to enact, as the position paper notes, in the area of criminal law. The major consequence of this murkiness, I would suggest, is that it would greatly encourage resort to the courts in determining the shape and scope of any referendum.

This assertion probably requires some explanation. While Canadian governments have sometimes consulted the people in a way which required a specific answer to a specific question, only rarely has it done so in a way which obligates the government or the Legislature to act in a particular way after the result is known. Since this innovation seems to be at the core of the government's position paper, and since it presents the greatest constitutional difficulties, I will try to direct most of my comments to this idea of the initiative.

There are several court cases which would appear to influence the constitutional position of this type of legislation, most importantly two Privy Council cases from the earlier part of this century. In *Re Initiative and Referendum Act*, a Privy Council case from 1919, the Privy Council had an opportunity to rule on the constitutionality of a Manitoba law which provided for direct initiatives; that is, proposals that became law once they'd been approved by the people in a provincial referendum. The Privy Council found this to be an unacceptable delegation of the legislative authority, ruling specifically on the way in which the law changed the office of the

Lieutenant Governor, which the court ruled was beyond the capacity of the province to do.

The second case, *R v Nat Bell Liquors*, dealt with a liquor law which had been passed under the authority of an Alberta direct initiative law. However, unlike the Manitoba procedure, in Alberta once a bill had been approved in a referendum there was a statutory requirement that the Legislature enact the law as approved by the voters. The Privy Council, somewhat in contradiction of its earlier holding in *Re Initiative*, found that the liquor legislation was validly enacted. Peter Hogg, a noted Canadian constitutional expert, simply indicates that the area of law is not particularly well-defined and that the authorities are mixed, although he does state that he believes that *Nat Bell Liquors* was wrongly decided.

The net effect of these cases then is rather like Mackenzie King's position on conscription: Direct democracy if necessary, but not necessarily direct democracy. While that kind of ambiguity might have appealed to Mr King, I think it's inappropriate when what is at stake is the legal authority to pass laws. Simply put, when a government acts in a poorly defined area, such as this, where the constitutionality of its actions can be questioned, it invites challenges to that authority, particularly through the courts.

1020

The government, in its discussion paper, is very careful to point out those proposals for referenda which would require constitutional amendments and those which would not. By example, the proposal which talks about a true direct initiative correctly identifies it as one which would require a constitutional amendment. Similarly, a proposal which would permit the government or Legislature to refer questions to the public for advice would not require a constitutional amendment, since neither the government nor the Legislature is bound to do anything after such a consultation, although the paper correctly identifies this as a plebiscite, rather than a referendum per se.

A meaningful reform — that is, one which would permit the kinds of sweeping initiative powers which are suggested in some parts of the position paper — may only be possible with a constitutional amendment. To lessen the impact of this rather startling conclusion — that is, to avoid the fact that there appear to be serious constitutional impediments to the adoption of referendum legislation which would obligate the government to respond in a serious way to the result of a referendum — the government simply states that some lawyers suggest that such legislation would require a constitutional amendment. This is a rather serious flaw in the proposal, and I would simply note that if some lawyers can be found who would question the province's ability to pass that kind of legislation, some lawyers will likely take that to court.

The government then is faced with several possibilities. By my estimation, it has about four: It can retreat, it can proceed with some kind of modest proposal, it can proceed with a potentially unconstitutional proposal or it can potentially proceed with some kind of constitutional amendment. I will try to deal with each in turn.

It can forget the project, although I think the fact that these hearings are being held and that this paper was

published suggests that is not a preferred or even a considered option.

It can enact legislation for which it knows no constitutional amendment is required. This, however, forces the government to adopt legislation which could not be challenged constitutionally, and that means it would have to pass legislation which would not obligate it to do anything with the result of a referendum. I understand that would be an unsatisfactory state of affairs and is no different in principle, although in effect it may be quite different, from the government's current practice of conducting public opinion polls to determine the public's state of mind on particular policy areas.

Third, the government can pass legislation which it thinks may overstep the current constitutional framework. It then faces two further choices: It can refer the proposed legislation to the Ontario Court of Appeal, to determine whether it runs afoul of the current Constitution, or it can simply pass it, in which case the first proposed initiative will almost certainly face a challenge, either before or after the actual vote, as to the constitutionality of both the content of the new law as well as the constitutionality of the referendum legislation itself. In the event that the court finds the law unconstitutional, the province would then face the further choice of abandoning the law, seeking to reform the law so that it did comply with the Constitution and the advice of the court, or seeking to reform the Constitution.

This leads to the fourth option available to the government, that of a formal constitutional amendment. The amending formula contained in part V of the Constitution Act, 1982, that is, sections 38 through 49, is rather complex, requiring, for different kinds of amendments the consent of all the provinces, sometimes two thirds of all the provinces representing 50% of the population, one province alone, and in all cases the consent of the federal Parliament. Although constitutional amendments are difficult, as the Charlottetown and Meech Lake constitutional rounds show, they do occur. It would be possible to draft a referendum and initiative law which limited its direct effect to the province of Ontario and did not affect the office of the Lieutenant Governor, which would put it into a different category of amendment, or derogate from the powers of the provincial Legislature, and thus, under section 43 of the Constitution Act, 1982, would only require the consent of the provincial Legislature and the federal Parliament.

However, this would obviously require federal-provincial agreement and a great deal of legislative time, both here at Queen's Park and in Ottawa, where it would have to proceed through both the House and the Senate. However, a committed government could get a constitutional amendment that would permit a referendum law that obligated the Legislature to act on the results of a consultation in a way that was consistent with the Canadian Constitution. Unfortunately, I don't think that would prevent people from challenging the content of particular initiatives as being unconstitutional, either because the law is beyond the jurisdiction of the province or because it infringes the individual rights outlined in the Canadian Charter of Rights and Freedoms. In either case, the courts would be involved in determining whether the proposed question or resulting law was constitutionally valid.

Perhaps you've notice how often the courts come up in my presentation. In part, that reflects my study of the American experience with initiatives, where there is frequent resort to courts to determine the constitutional validity of particular state initiatives. These court cases range from the procedural — that is, challenges to the wording of the question or the number and validity of the signatures — to substantive questions — that is, challenges to the constitutionality of the content of the proposed amendment.

I fear these would also become features of initiatives here in Ontario, in part because the constitutional law around initiatives and referendums in Canada is so murky and in part because referendums lend themselves to court challenges. They're naturally adversarial — they prescribe Yes and No options — with supporters on each side likely to have strong feelings about the desirability of their preferred option, and potentially with the resources to bring a court action.

These are reinforcing tendencies; the greater the sense of aggrievement at losing the referendum and the greater the resources available to those campaigning for a particular option, the more the murkiness of the state of the law invites litigation. It would be ironic indeed if the actual outcome of the government's desire to give a greater voice to the average citizen of the province was to empower the least democratic, the least representative branch of government — the judiciary.

What course would I recommend then to this committee? I would begin by observing that representative institutions, such as Parliament, parties and of course legislative committees, have served Ontarians quite well for the past 150 years and are perhaps more robust and more capable of addressing the problems of voter alienation identified in the position paper than the authors of the position paper would acknowledge.

If part of conservatism consists of preserving those parts of the past which contribute to a community's present wellbeing, then true conservatives should be wary of adopting any policy which threatens that wellbeing. A form of direct democracy that threatens the ties Ontarians do have with democratic procedures, that invites substantial recourse to the courts and that requires constitutional amendment to occur before it can be implemented is one that is easily characterized as a threat to the community's wellbeing. It is not a course that I would recommend to you.

Mr Tony Silipo (Dovercourt): Mr Staples, thanks for your presentation. I find myself a little bit perplexed by your presentation. I agree more or less with your conclusion, but not for the reasons you've given. As I've listened to some discussion, your presentation and that of others who have touched on the constitutional question, it strikes me that it's pretty much of a red herring in the sense that I don't see that there are overwhelming problems on the constitutional front that could not be addressed if we were serious about pursuing referenda as an alternative or as an addition — I hope as an addition — to the legislative process.

If time allowed, I'd love very much to get into a greater discussion with you on that, but perhaps I can just ask you to go back to the beginning in terms of what you would see as being the fundamental problem that would

make the use of referenda different in terms of the constitutional issues that have to be respected than the Legislature passing any kind of bill. In other words, any bill that's passed by the Legislature is always subject to review by the courts — by any citizen or any group. I don't see the referendum being that different. I agree with you that there are ways in which we could diminish that, and should, such as the referral to the court for an opinion on the constitutionality, but there have been a number of times when certainly I have thought, and sometimes advocated, that even government bills ought to go that route to avoid potential litigation down the line.

I don't see that there's such a big obstacle, as far as the constitutional issues are concerned, in terms of referendum, but I would agree with your conclusion that it's important that we first of all be conscious of that, but also take a look at it in terms of what it's going to do to the democratic process. In that sense, I've been of the opinion that we should be open to the idea of referendum, but look at it primarily on a province-wide basis, to be used for major issues, with then, as you heard from the previous presenter and certainly something I would be supportive of, the option of regional referenda on issues that were specific to a particular region or part of the province. I just offer that and invite your reaction, in any way you wish, to that.

Mr Staples: I would certainly agree that any legislation faces the potential of judicial review. My response in terms of why I think that with referenda it might be more likely for that to arise is that, in the first instance, in any referendum, you run a referendum campaign and there's inevitably a Yes and No option. It leads, quite naturally, to the kinds of adversarial proceedings which then lend themselves to the courts.

You might say that a similar thing applies in the Legislature. The idea of a referendum, though, is, quite naturally, to try to motivate a much greater sense within the population, generally. Politicians, generally speaking, don't act through the courts, they act through legislatures. By moving it to referendums and moving it to within the same kind of adversarial process, I think you are much more likely to motivate people within society if they lose to try to question that through the courts. That would be one part of my answer.

The other part would simply be to note that right now I don't think the constitutional position on referenda or, in particular, initiatives is all that clear. So anyone who felt aggrieved by the content of a particular law would have a very strong incentive to try to bring that concern to the court.

Mr Grimmett: Very briefly, Mr Staples, in your study of the Canadian experience in referendums, do other jurisdictions have any direct initiatives and, if so, have they been challenged at the appellate level in any of the provinces?

Mr Staples: The answer to that is that British Columbia does have an initiative law. It was passed by the NDP during its current time in government. It has not as of yet been challenged. It should also be said that under that law there has not yet been an initiative.

Mr Grimmett: So the most recent case law we have is the two privy council cases?

Mr Staples: On direct legislation, yes. There are some cases that speak to municipal referenda, but that's a slightly different class of legislation, I think.

Mr Bartolucci: Andrew, you referred to Darin Barney's work earlier on. Do you agree with his definition of democracy, that it is "The equal ability of all citizens to participate meaningfully in the decisions that most closely affect their lives as individuals in a community"?

Mr Staples: Yes, I do.

Mr Bartolucci: Darin thought that the way the proposed paper is written right now it is anti-democratic. Do you agree with that as well?

Mr Staples: I share some of his concerns, particularly with reference in the position paper to a taxpayer rather than a citizen. It suggests a rather narrow outlook on the kinds of concerns that citizens of Ontario might bring to referenda.

The Chair: Thank you very much for your presentation, Mr Staples.

Our next presentation requires the setting up of an overhead projector, so I'm going to recess the committee for five minutes while we do that.

The committee recessed from 1034 to 1043.

UXBRIDGE RATEPAYERS ASSOCIATION

The Chair: We have with us the Uxbridge Ratepayers Association, represented by June Davies and Anne Holmes. Welcome. We look forward to your presentation.

Ms June Davies: To begin with, we need to share with you that we believe deeply in government. A government is the mechanism we use to make communal decisions. We believe that civilized society cannot function effectively without effective government. We also believe deeply in community-based, bottom-up-driven government and the power of individuals to self-govern and to provide intelligent direction to elected officials and government.

The Harris concept of governing "arises from a strong belief in individual choice, collective stewardship, and distributed responsibility for the future...government should be to serve and facilitate those aspirations, not to rule or constrain them." Leadership and reflecting the will of the people go hand in hand. There is probably nobody in Ontario who would not be inspired by those words.

The ability to act on these words is limited, however, when individual citizens lack relevant knowledge, feel disempowered in the political process, distrust politicians and government and feel public interest is being sacrificed to self-interest groups, lobbyists, unions and corporations.

Referendum is being offered as one of the solutions to help give legitimacy to citizens in decision-making, re-establish credibility, increase accountability and reduce the domination of self-interest groups.

It is also suggested that referendum would help to invigorate Ontario's economy, and we're sort of wondering how that would happen, because it's not self-evident, other than that the cost of running these might be a job creation program. But we are inspired by the belief that most problems can be solved if decisions are brought back to the people at the grass roots.

A number of important concerns arise with referendum in addition to constitutional commitments and implementation costs that need to be considered, because we believe if we really believe in referendum and we're going to carry it out, we'll deal with the constitutional issues and the cost factor. We'll do it in a way that's efficient and effective.

We'd like to address what we think is foundational to even considering referendum in the first place.

(1) Without a politically neutral, broad-based public education component to support it, referendum processes carry the risk of doing exactly the opposite of the stated intentions. Specifically, if referendums are to be conducted as per the electoral process — that is, presented in the adversarial debate format of party politics, supported by partisan media and funded by organized self-interest groups — then the objective facts may never be known and citizens, as at voting time, will continue to see their role as irrelevant.

(2) The competitive campaigning nature of our political process further defeats efforts to gain citizen support for elected officials or the elected government. Can we realistically expect support from those people whose candidates or party did not succeed in an election or whose choice in a referendum does not win out? The battle continues in and out of the Legislature by elected officials and citizens alike, the former in formal opposition and the latter through apathy and activism. In the case of activists, these citizens are categorized as serving their particular self interest, even if the self interest is public interest. They're damned if they do and damned if they don't. We need a referendum process that is not competitively based.

(3) If the referendum mechanism is seen as an abrogation of a government's responsibility to govern, is it not also an abrogation of citizens' responsibilities to government when they pursue their own economic and lifestyle goals and leave government to run itself between visits to the polling booth? If legitimizing the citizen in the political process is for the sole purpose of encouraging compliance, then we are ignoring or discrediting a most constructive element of citizen development. John Ralston Saul, in his book *Unconscious Civilization*, explains:

"The very essence of individualism is the refusal to mind your own business. This is not a particularly pleasant or easy style of life." I can vouch for that. "It is not profitable, efficient, competitive or rewarded. It often consists of being persistently annoying to others" — and I really relate to this — "as well as being stubborn and repetitive. The German voice of Enlightenment, Friedrich Nicolai, put it clearly, 'Criticism is the only helpmate we have which, while disclosing our inadequacies, can at the same time awake us to the desire for greater improvement.'"

"Criticism is perhaps the citizen's primary weapon" — it's unfortunate; I don't think we need to use those words — "in the exercise of legitimacy. That is why, in this corporatist society, conformism, loyalty and silence are so admired and rewarded; why criticism is so punished and marginalized."

I think we need to take those as cautionary thoughts.

If government is indeed going to serve and facilitate the aspirations of people, then people must be actively involved in communicating their aspirations beyond electing their representatives to government. Such expression of will must be welcomed and accepted as part of the process, whether it conforms or not.

(4) If problems are so "complicated, and often beyond the scope of individual jurisdictions in an interconnected world," how can they be reduced to a simple Yes or No decision? To quote Saul again:

"The complex issues of reality, which democracy can deal with in its own slow, indirect way, are swept aside by single clear issues, often modelled on single human qualities — either we must have common sense, or we must have reason, or we must have memory. It is as if any combining of human qualities is impossible...."

"Both the referendum and direct democracy are a happy marriage with corporatism. The complex, real questions are dealt with behind the scenes through efficient 'interest mediation' between the different interest groups. As for the citizenry, they are occupied with the fireworks of their direct involvement on the big questions and their direct relationship with the big people. A simple 'yes' or 'no' and history, they are told, will change."

Aspects of problems may be able to be addressed through referendum, but other mechanisms also need to be in place for citizens to deal with complexity and be capable of forming public judgement.

(5) The conflict that elected officials experience among their different obligations-commitments will increase with referendum because constituents will have a greater expectation that their elected representative will act on their behalf and, if necessary, in priority over these other commitments.

One has to seriously consider the impact of the party system on our ability to function cooperatively and synergistically in community and among levels of government. What role can parties play in a political process to reduce the impact of conflicting roles? People vote for political candidates and parties for many more reasons than the actual agenda being put forth. Even if the agenda was the reason, in the majority of cases citizens have bought into only a portion of the items. I think this is why we're challenged with getting the kind of support that we think we should be getting with a majority government.

1050

(6) If government's role is to change to that of servicing and facilitating citizens' aspirations and public interests rather than to rule or constrain them, then citizens need a process to determine what these aspirations are and to effectively communicate these to their elected officials in government. The question of trust remains. Do elected officials feel citizens are capable enough that they are willing to relinquish control to them? Referendum could serve to give citizens the impression of control when in fact the control is still with government, and all the responsibility thereto. The very thing we are trying to change could be inherently negated. Either we believe in human capacity or we don't.

Thomas Jefferson said: "I know of no safe repository for the ultimate powers of society but the people them-

selves. And if the people fall down on the job, do we take it away from them? No. We inform their discretion. We start again. Because the earth belongs always to the living generation and the political process by the people goes on all the time, if there is to be a democratic nation."

Those are our concerns around referendum. We're excited at the fact that this is an effort to involve citizens, but we're going to offer three suggestions or mechanisms that we feel will help overcome some of the obstacles and make the referendum process successful. We'd be partial to certain ones being initiated first so that referendum doesn't run the risk of being rejected because maybe we've done it a little prematurely and perhaps there are some other pieces that need to be in place, or perhaps referendum needs to start at community level and move upwards and expand. But I think we should be very sensitive as to where referendum fits in the implementation of involving citizens.

We're going to offer three suggestions. One is focusing on public issue forums, one on community-building through community-based economic development and planning. We've focused on economic development because we figure that's really what sustains community and its ability to function socially and environmentally responsibly. We're also going to speak briefly about the entrenchment of citizen rights in the political process at all levels of government.

It should be known at the outset that we feel that both government and citizens should be able to initiate referendums or plebiscites at each level of government, according to regulations that ensure the public voice that is recorded has not been unfairly manipulated by self-interest, regulations that ensure that these processes are effectively and appropriately used and are barrier-free.

With that, I'd like to hand over our presentation to Anne Holmes, who will talk to you a bit about the use of public issue forums.

Ms Anne Holmes: Recently, June and I have attempted through local discussion groups and study groups to introduce the public issue forums in our own community. It is our intention to extend into other adjacent communities, and we're getting a very good reaction to it. We took courses on it and we have some materials we'd like to share with you in that regard.

"The whole purpose of democracy is that we may hold counsel with one another, so as not to depend on the understanding of one man, but to depend on the counsel of all. For only as men are brought into counsel and state their needs and interests can the general interests of a great people be compounded into a policy suitable to all." Stated by Woodrow Wilson in 1912.

History clearly demonstrates the need for participatory democracy. To be effective, public involvement must begin at the community level. Every citizen needs to be given the option of taking part in the deliberations. Public issue forums can provide this opportunity.

In a public issue forum, participants are given the background information related to the choices surrounding the issue. They read this information prior to commencing the discussions. If you refer to figure 1 on the next page, this is a typical form outlining some choices on a particular issue.

We didn't fill in the pros and cons because we didn't want to get into a deliberative discussion here, but you can see the format we have been following. Each choice is given equal time for discussion, and the moderators demonstrate no bias for a particular choice. Instead, participants are encouraged to share their understanding of the issue and their points of view. Probing questions help to identify the underlying values and to determine common ground. There is no campaigning or judging. Listening is as important as speaking. People may like some aspects of a choice but not others, and in some cases a choice not listed emerges for discussion. The moderators record discussion highlights to assist in the reflection part of the forum which brings the forum to closure.

At this point we're ready to set up our charts. We got a little damp on the way over.

Ms Davies: Deluged. We're still drying out here.

Ms Holmes: As you can see in chart 1, forums can create public knowledge. Public knowledge is a shared understanding of the issue, identification of common ground. Finding common ground requires a sharper definition of the public's interest, a shared sense of purpose and direction, the identification of a range of actions that the public would support.

Chart 2: We emphasize to the group that choice work is work and it involves coming together and understanding each other's point of view. The job of forum participants is to move towards a choice by understanding how the issue affects people, understanding the key facts, assessing pros and cons of every option and weighing the options' costs and consequences against what is most valuable to people, hearing with respect the perspective of others, finding out what makes the choice so difficult, and working through conflicting emotions. There are ways to test your progress in this deliberative process. You can ask: "Can you make the best case for the option least favoured?" — that proves that people are really listening — and, "Can you identify the negative effects of the option most favoured?"

Chart 3: At this part we're coming to closure and we want to reflect in this deliberative discussion on what we have found. We ask for individual reflections: "How has your thinking changed?" "How has your thinking changed about other people's views?" Group reflections: "Can we detect any shared sense of direction or any common ground for action?" "What did you hear the group saying about tensions in the issue?" "What were the tradeoffs the group was willing or not willing to make?" Next step reflections: "What do we still need to talk about?" and "How can we use what we know now?"

Ms Davies: It's our thought that if a public issue forum preceded referendum so that people have a clearer understanding of all the different choices people are expressing to us, they'll be able to make a much more conscious decision. We think this could be easily implemented. It's easy to do a train-the-trainers program for moderators. There are enough people in government and consultants and teachers who are very good at facilitating. There are a lot of people throughout the province where we could train trainers to do the public issue forums, from each community.

I think we could pilot this kind of thing even on a smaller scale, on a regional level. But if the education doesn't precede the referendum, it's really problematic. They need to go hand in hand, the partnership of education, and I don't think we can trust the current adversarial approach and the campaigning and the winning-losing approach that seems to surround the kinds of things we do in politics. I think we need to make a change towards that. We think this would be a really strong complement to the situation.

1100

I want to talk to you a bit about the second part because an important part of motivating citizens to become involved in government process is to help them understand what we feel is the basic economy, the basic thing that helps their community run, and to involve them in the planning for their community.

Community building is fundamental to developing a healthy, sustainable future and it can only happen when citizens become vested in their community and they have a sense of ownership of the economic system that sustains them. Once vested, they'll expand their interest and involvement to larger related communities, whether it's region, watershed or whatever, and higher levels of government. We feel that we should be developing and implementing this from the ground up.

We want to share with you an idea of how educating the community could be straightforward. What we're looking at here, and you can argue with our mathematics a little bit, is community-based business development, and I think we need an economy that starts to get rooted in community and isn't hanging from the sky hook of a global economy. Each time a dollar is circulated internally in a community, the economy goes up one dollar, and that's old money — that's before taxes — so if you keep rotating this dollar it gets less and less. We won't talk about the nothing part of it. Each time it's circulated the economy goes up, each time a dollar comes in from outside the community the economy goes up, which is the new money, and each time we spend a dollar outside the community our local community goes down.

It's that simple and we know that, but people don't seem to understand that basic concept of economics. Our community objectives, as we grow from the grass roots in the economy, are to keep old money in town and circulating, attract as much new money as possible and establish and strengthen community-based businesses. The more community-based a business is, the more time the buck circulates.

Criteria, and we can add to these and delete and change them, but this gives you a sense of what we're talking about: a community-based business, the premises are locally owned, so the buck goes to him. The business is locally owned and operated, so the buck comes to him or her. Workers are residents of the community and, where applicable, jobs are structured to ensure maximum employment opportunity to the community. Local resources are used to make the products, local services and supplies are used to run the business and financial in-kind support is given to us as local not-for-profit activities and community capital expenditures proportionate to profits made. The money keeps circulating around and

the money goes up. We're suggesting looking at community-based businesses.

As we educate the community they get fired up about their own economy, because a lot of communities don't know what their economy is. I can demonstrate that. Sample communities — we took ours because it's the one we can easily work with. We have agriculture, tourism, spring water and aggregate. We have aggregates for as long as it's lasted, and if we take out all the aggregates we might not have spring water because we're not so sure how the aggregates affect it. We're really focusing on agriculture and tourism because we figure those are the ones that are renewable.

A sample community-based business based in our community is cheese and dairy product production — we have a lot of dairy farmers — bottled water, soft drinks, micro-breweries, distilleries. We have the highland games. Someone wants to put in Chalk Lake single-malt scotch. We have meat processing, frozen and canned vegetables, vegetable distribution, a large farmers' market, tourism etc, all the things that we can grow out of our own economy, and it makes sense. People just haven't grasped that knowledge yet, that, "This is my economy; this is what makes my community run." They feel so dependent on bringing in big business or business; in our case the Coke plant came and went.

I have a chicken farmer up the road who raises chickens. Where do his chickens go right away? To Schneider's. Now that they're closing down it might be an opportunity for a small business. Our businesses don't need to be big, just local, and we have a lot of good examples: Sleeman's beer, Creemore beer, micro-breweries that are supporting a lot of people and doing quite well in the market. We feel we need to get people vested in what makes their community tick in terms of being able to afford themselves.

To give you an example, I don't think any community knows what its GTP or GCP is, its gross township or city product. It took me, I think, if I'd recorded them, 40 phone calls to ministries at the federal and provincial level to find one person who had to create a software program to give me the GTP of Uxbridge, and I only did it for retail.

How can we assess and evaluate economic development without that fundamental piece of information with which to compare? We have to get a grasp on our own economy.

I was meeting with someone yesterday and I said, "What's the basis of your economy?" He wasn't quite sure. He started to talk about a few things. I said, "You're quite similar to us in Uxbridge," because this was up around the Simcoe area. It's agriculture. Then he started to get a feel for this.

My argument is that movers and shakers really don't understand how economy works and that we just need to start to root it. Once we can start to educate people to become vested in their community, to become involved in the economic stability — I can show you an example, but I don't think we have time this morning, of how they have to understand their tax system too and how the majority of our taxes are dependent on things other than business tax and residential tax, which to me is unsustain-

able. The more our operating can be supported by our tax collection and lessening our dependency, but there's still some work to be done with that — I think citizens need to understand their tax system, and it can be presented very simply. They need to understand their local economy and begin to become vested in it.

We have no tourist association in Uxbridge and yet we itemized over 60 things — those are just outlined without expanding it — that create a tourist economy in Uxbridge. We don't have an economic development officer and we don't have a tourist association. Let's get a handle on the local economy.

Once people start to get vested in their community — we'll go for broke on this one — we suggest they start getting involved in decision-making. We're suggesting here that we begin a strategic planning process that brings in all these elements of the social components, the economic components and the environmental aspects of the community and that those movers and shakers, not the politicians, because they're not facilitators, remember — serving — are now facilitating a planning process where these people start to come together and say, "These are my needs, these are my needs and these are my needs in this community." I'll say: "Okay, you guys in the social sector, here are all your needs. The pot is this big. If we can only do one thing that you think is fundamental and a foundation to this community, what would it be? If we could do two, do we need a set of principles to help guide us to make this decision? Our politicians and our bureaucrats are there to give us the actual information we need to make those decisions. Help us do that; facilitate that."

They start to create that self-selection process — no appointments; this is citizen generated — they create their social development planning council that helps to do this prioritization process. A plan that comes up through "social" gets vetted by the other two because there are always impacts. Right now we have clients who just go without the intense impact analysis and the full cost analysis of these things.

Any plan that comes up through "economic" gets vetted. All the plans come up self-selected, create a community development planning council that helps to come up with the priorities, come up with a strategic plan that says, "If this is the strategic plan, here's our mandate." It covers about 10 years. We're going to look at it once a year. But here's our mandate, and if you're our local politician, help us make that happen; if you're a regional politician, help us make this happen; if it's a provincial politician, help us make this happen; if it's the federal politician, help us make this happen.

We know that parts of this plan will be done better if I link with your community to do it. It's more effective, but it's us who decide that we'll create these relationships, not the geopolitical boundaries, because our economy up in Uxbridge isn't so tied to Durham region. In fact, it's really contrary to what we need north of the region because we're agriculture and tourism. We're not industry and yet we're pulled into residential development and this corporation business.

Yes, we'll stay part of Durham region, but we have to open our minds to relating to the Lake Simcoe watershed

because that's a whole tourism package that could be put together. We're not awake to it because we're tied to these geopolitical boundaries that don't always make sense for certain things. They might for some things, so I think as communities start to get a sense of where they are, they can create relationships as they need to and the political process can work through getting good direction. It might not work right at the beginning, but what does Jefferson say? "Let's start again and we'll teach the part that didn't happen." I say let's start it at a small level in communities, just testing it out. Build it, strengthen it and move up.

1110

Mr Boushy: I'd just like to say thank you. I think you made one of the best presentations we ever had. Are you sure you're not running for political office?

Ms Davies: We won't talk about that.

Mr Boushy: Everybody is in favour of a referendum. There's no doubt about it. If anyone isn't, there's something wrong somewhere. The thing that bothers me in considering public opinion is that they can change their minds in regard to any issue. Do you feel that the referendum results should be binding on the government of the day? What happens if we adopt something and then, say, six months down the road the public is not in agreement with that? Do you think the results are binding on the government of the day?

Ms Davies: If a really good education program precedes the referendum and people are knowledgeable of all the points — when people have had good input — they feel committed to the decision, and if we have a good education system I don't think we'll have that kind of flip-flopping. Without a good education system I think we'd have a problem, and in that case maybe we'd have to move into deciding whether something is binding. Maybe we'd start off with referendums that aren't binding until we get a feel for how things go.

Mr Boushy: If we have to draw up legislation regarding referendums, we have to decide whether or not the results are binding.

Ms Davies: That's right.

Mr Boushy: You didn't really answer my question.

Ms Davies: No. To me every issue is different, and you make a commitment to the process at the outset — is it going to be something that's binding? Is it not going to be? Is it a plebiscite? Is it a referendum? — so that people are really clear what they're voting on and that if they vote for this it's binding. As long as the education is thorough and people understand what they're getting into and that this commitment is for real, they will live with those decisions.

Mrs Julia Munro (Durham-York): I just wanted to congratulate you. As your elected MPP I appreciate the time and effort you've put into this. I can only say that your contribution certainly adds to the level of political activity and consultation that goes on in the riding, and I'm proud of that. Thank you.

Mr Bartolucci: Thank you very much, Ms Davies and Ms Holmes, for a very excellent presentation. You've taken a unique angle at approaching this and it's very refreshing, but more importantly it's very educational.

I will ensure that this and any other material you give us is shared with Frank Hess, who is our Sudbury Regional Development Corp manager, Paul Tosolini, who is the Sudbury Small Business Centre manager, as well as Dick De Stefano, who has hosted the Next 10 Years conference in Sudbury. We had to go through this exercise in 1979 and we continue to go through it, upgrade it, and you know it's an ongoing thing. It was truly a meaningful presentation. I want you to believe that.

A two-part question, but it's very short: When we talk about the public education process, who should pay for it and how long should that process take for a particular referendum?

Ms Holmes: Each issue would be unique, we would presume. If we started within municipal levels, then in our particular situation agriculture could be a very important issue to discuss, particularly retention of agricultural lands versus development.

I would say, to give it fair timing, that each deliberative discussion perhaps should have about a month's opportunity, depending on the size of the community, of course, that we're talking about. We're talking about 14,800 in the township of Uxbridge, so we certainly could do it in a month in Uxbridge, but it would be relative to the size of the population and the complexity of the issue too.

Ms Davies: This is a very inexpensive process because it's community-based. There are a lot of local people who in a lot of cases — God, what we volunteer to our community is phenomenal. But "Train the trainers," the expense of that at whatever level it is: "Come in. We'll train you."

There are two parts to doing it: framing the issue, which takes a bit of time, and we could probably frame an issue. We framed an issue in a week and tested it, then we went back at it and framed the issue again, then we went back with the refined one. Once we have the issue framed and we have tested it on a small scale, we just go out and do "Train the trainers"; you blitz the public issue forum.

Ms Holmes: It took us three days.

Ms Davies: Yes. Politicians sit in, and they hear the public judgement, because it's not for them to participate other than in helping to give factual information that helps them understand the issue maybe a little more clearly.

Mr Silipo: Thank you very much, Ms Davies and Ms Holmes, for a very different kind of presentation than we've heard so far, I think, around this issue, one that presents a lot of very interesting and useful ideas around how you build democracy from the ground up, which is essentially the message I get from what you're telling us.

There are some who might look at your proposal and say it sounds nice but it's somewhat idealistic. For one thing, how could you ever get the interest in this kind of process that government, for example, could look at and say, "Yes, that reflects a consensus or decision that's been arrived at in a particular community"? What would your response be to that?

Ms Davies: A good example would be in the US, where they have been working with public issue forums.

They did a national issue forum, invited 600 people from across the nation. They went through the deliberative discussion, and I can't recall what the topic was, then they invited — I think Vice-President Gore was there, plus a number of key politicians, to respond to questions from people who had gone through the deliberative discussion. What was really exciting was to hear the words they had talked about in discussion being spoken. They could get a sense of what the perspective was of the particular politician. They were very clear as to what choice they might make in terms of the person because they were really clear on the issue. We can demonstrate this in a really exciting, succinct way.

Mr Silipo: I think you touched on this earlier, but I'd like you to expand a little, if you would. How do you see this process you're suggesting mesh with the notion of referenda? Is it something that is a replacement or is it something you would see as a big prelude to any referendum? That's how I've understood it.

Ms Davies: A prelude and a complement. Let's face it, we can all be in the same room and it's hard to come to consensus. I would love to think that consensus is possible, and maybe in small scales it is if we have like minds, but it comes down to making choices. I think after a public issue prelude-complement to it we can get a sense of what people are feeling. It helps to give us the resources we need to articulate the questions in a really clear way and that perhaps allows us to articulate the questions that build in complexity.

Mr Silipo: Given the way you've presented it and the way I had understood it, would you suggest to us that in any legislation that gets established governing referenda, something like this or this type of process ought to be built in as part of it?

Ms Davies: Absolutely. Otherwise I think referenda are really a risk.

Ms Holmes: This is basically what we're saying with citizens' rights to participate.

Ms Davies: Citizens need to know just what the path is. I can't believe the reading we have to do to find out what to do to get our voices heard about a particular issue. My God, it's fine print. Just as we have an Environmental Bill of Rights, let's have a Citizens' Bill of Rights, "Here's how you access the system," and let's start getting this stuff going back and forth and becoming friends.

Ms Holmes: We don't know if we can have a citizens' initiative referendum until we read the Municipal Act. Have you ever read the Municipal Act?

Mr Silipo: Not recently.

Ms Davies: It's good bedtime reading, getting to the climax.

The Chair: That's our next job. Thank you very much for your presentation. We certainly appreciate the input you've provided.

1120

JOHN DEVERELL

The Chair: Our next presenter is Mr John Deverell. Mr Deverell, would you please come forward and explain to us what you think about referendums.

Mr John Deverell: Thank you, Mr Chairman and members of the committee, for the opportunity to appear. I have some familiarity with these halls and I have been observing politics in this province for a long time, but I'm appearing today as a private citizen and in no way representing the views of my employer.

I'd like to begin by commending the government members for following through on pre-election promises made by their leader and addressing fundamental democratic issues, the nature of our citizenship and the legitimacy of our lawmaking processes. I think the discussion paper you have circulated indicates that some serious thought and research are under way on this topic and that we are dealing with a serious intent. That encourages me.

I think earlier this week you received from a colleague of mine, Greg Vezina, copies of this book, *Democracy, Eh?*, in which we make the case for a citizen initiative power for Canadians and a number of other reforms to the political system. Most of the argument you will find in here — the chapter on direct democracy is on pages 101 to 131 — translates easily and suitably into an Ontario framework. Your own paper signals that there is an extra difficulty at the provincial level because the Ontario Legislature lacks the formal capacity to make constitutional change, but we're all used to living with some of these contradictions of federalism, and I'm sure that one could be managed.

As any scrutiny of this book will make clear, I regard as illusory all forms of citizen initiative legislation which do not provide for the voted proposition to become law in a form intended and approved by its sponsors.

Governments, as they do, may consult the population by a variety of means, but the concept of citizen initiative, I urge you, should be respected by this Legislature and reserved for something much rarer and more profound than consultation. Ontario should embrace the real thing: the right of citizens to decide directly what the law will be.

In my view we have two significant advantages in coming late to the serious consideration of instruments of direct democracy.

First, we have in place a Canadian Charter of Rights and Freedoms which, as supreme law, provides protection for minority rights which might otherwise be infringed or endangered by majority voting.

Second, in our political culture we have come to accept the concept of regulated political debate in elections and referendums due to the need for a level playing field and the accompanying need for restraint in the amounts and uses of campaign money. The concept of registered Yes and No committees which would serve as conduits for referendum campaign funds and broadcast allotments, and organizers of the public debate and public education which should precede a vote, those concepts are already established and accepted in our political culture and in our legal system, unlike in the United States, where they have had difficulties with the question of regulating campaign expenses because of the freedom of speech concept. Our legal system has basically dealt with that question.

The challenge for you as legislators is to devise a citizen initiative power which jealously preserves the

independent formulation of the proposition so as to preserve the intent of the sponsors while at the same time avoiding legislation which is unnecessarily awkward or unworkable. My colleague Vezina and I gave considerable thought to this question, and in our discussions, reading and research we think there is a way that both objectives — to me they are the essential ones — can be well served. The petition sponsors must consult the Attorney General for legal advice on whatever difficulties may exist in their proposition as they first put it together, but in our conception they would remain in control of the wording of the proposition all the way to the ballot box.

The wrinkle we suggest to you which allows for the experience of the legislators to be brought to bear on the referendum process and improve it is that these petition sponsors would retain the authority to withdraw the petition and forestall the referendum if it seemed appropriate to them to do so. The point is that this would give the Legislature the opportunity essentially to bargain with the petitioners over the content of the proposition so that, for instance — when we talk about the Legislature, essentially we're talking about the Legislature's majority, therefore the government — the government would have the opportunity to adopt legislation which satisfies the petition's sponsors and in that way persuades them to forgo the referendum. By satisfying this group that its purposes were being achieved, all the expertise that the Legislature can bring to bear on the drafting of legislation is allowed and could result in the ballot actually not taking place but in the law being changed in the way intended by the petitioners. That's the happy scenario in which there's a meeting of minds, the purpose is achieved and the legislation is drafted effectively and efficiently.

In the instance in which the petitioners and the Legislature simply do not have a meeting of the minds and the Legislature regards the petitioners as seriously wrong-headed, the major alternative would be to propose alternative legislation on the same subject and offer the electors the choice between the two. That would be a campaign in which the petitioners would say, "Those devils will never get it right, they never understand and here's what must be done," and the Legislature, presumably the governing party, would offer a major alternative and the electors would simply choose between those two legislative alternatives.

From my reading, this is a device that is employed in other jurisdictions, and very frequently the judgement of the legislators is preferred to the judgement of the petitioners, but it does provide for that tension in which the petitioners get their shot and finally get their access to the people and the people's judgement.

I think those are the central questions in the structure of a citizen initiative piece of legislation. There are many other issues we touch on here which we've considered and which will no doubt occupy you. I will be happy to answer any questions you may have on these subjects to the best of my ability.

Mr Bartolucci: Thank you very much, Mr Deverell, for the book and for the presentation. I spent a little time last evening reading your chapter that is specific to what we're discussing. I enjoyed in particular the section "A Smidgen of (Direct) Democracy." I thought it was rather

very true, to the point and very timely, and we should all spend a little bit of time reading that carefully.

1130

We were presented with a dilemma in our first presentation this morning. The mayor of Sault Ste Marie has already conducted a plebiscite/referendum to the people of Sault Ste Marie with regard to the establishment of a permanent casino. The majority of the people support the referendum. If this were to go ahead and if the province was to hold a referendum with regard to the future of casinos in Ontario and it was decided there be no more casinos, who would override? Would it be the province that would establish its policy, would it be Sault Ste Marie having a right to define its own destiny because of the obvious competition of five casinos within an hour's drive of Sault Ste Marie? How does the government or how does legislation take those types of factors into consideration when establishing legislation?

Mr Deverell: In my conception, in my understanding, the field of the referendum would be the jurisdiction of the government in question, so if we're talking about Ontario legislation and an Ontario citizen initiative, then the jurisdiction is Ontario, the electorate is the electorate of Ontario and the question is settled in that framework, so that a local interest — a petition can begin out of a local interest, but it can't prevail unless it can prevail on the full provincial playing field.

Mr Bartolucci: So there may be an opportunity for regional representation, but if it is the desire of a particular community, for example, Sault Ste Marie, to have a casino but the will of Ontarians is to not have any further casinos, then the will of Ontarians overrides the individual city.

Mr Deverell: That's the situation that now prevails. The question is a question of provincial competence. In a dispute between the province and a municipality trying to act outside its competence, the province prevails. A municipal group might try to use the citizen initiative to overcome resistance to some concept at Queen's Park, but they would have to be able to sell that idea province-wide in order to accomplish their purpose.

Mr Silipo: Mr Deverell, the notion you present that part of the process should allow, first of all, for the negotiations or the discussion between the proposing group and the government of the Legislature to see if acceptable legislation could be put forward has certainly been something that others who have presented it have also advocated, but your other point is one upon which others, at least a couple of other presenters I remember, have specifically warned us against. I'd like to hear you talk a little bit more about that. The rationale has been that if you allow, on the same referendum question, in effect an alternative position to be put, by government I take it from what you're suggesting here, then you are skewing, the argument would go, the result of the referendum, because of the power government would have to carry its argument out to the public to a greater extent than whoever the proposing group might be on the other side of the issue. What would be your response to that?

Mr Deverell: There is a campaign concept involved when you're taking one of these things to the ballot, and we would adopt the Canadian contribution to these ideas,

which is a restraint on spending. That's why you have Yes and No committees. This is a sort of Canadian contribution to this concept of direct democracy, umbrella Yes and No committees with some sort of financial mechanism which allows some access to media and some provision for public discussion, so that you have a structured debate, in other words, with some public financing to ensure that the question is aired before people mark their ballots, that there's an opportunity for public education and information and then a decision.

If you're up against an alternative proposed by the government, then it's an uphill slug, there's no question about that, but if there's a spending constraint so that in the committees of Yes and No there's an equalization, that it's not just unlimited spending, then that's an acceptable challenge for the people who are trying to do something the government thinks is unwise.

Mr Hastings: Thank you very much, Mr Deverell, for appearing before us. We've heard a lot of different views this week on this issue, on referendum legislation. One of the most common and prevalent was from certain élites, particularly the media and academic, that the posing of referenda or plebiscites or any sort of thing of that matter is a major threat to minority rights in Canada and in this province. They trot this out every time to say, "You shouldn't have hardly any referenda, because you're probably going to destroy minority rights." This argument was presented by at least three different groups this week. I'd like to get your thinking on that.

I'd also like to know your thinking in terms of the frequency of referenda and whether in terms of the timing, should they be apart from a provincial election or held together at the time of a provincial election. That was usually raised from the perspective of cost, but there were a lot of issues around when you have it with a provincial election and then you get candidates being shoved or pushed to support a particular question, whether government- or citizen-initiated.

Mr Deverell: If I could answer the timing question first, my co-author, Vezina, and I canvassed this question fairly vigorously and came to the conclusion that because our election dates are not fixed in this particular parliamentary system, the course of wisdom would be to have a fixed schedule for referendum activity. Our view was annual, at some point in the fall, probably coincident for purposes of efficiency with the municipal election processes where possible, so you have an infrastructure for balloting which works to fixed periods, rather than the timetable of this Legislature in which the date is at the pleasure of the Premier. You would have a fixed calendar so people would know how to do these things and how to participate in them on an annual cycle.

In fact we suggest here that if somehow a provincial election were to overtake a referendum process that was under way, you would hoist the referendum process. You might not have them at the time of the provincial election. Some of the issues might become campaign issues and might be dealt with in that way, and then if they weren't, people would be back the next year with their referendum, with a government sitting in place here in Queen's Park. But there would be that opportunity to say, "All right, there's an election that may deal with the

question, so let's wait and see what this election produces and what this government does," and if the petitioners remain unsatisfied, then they're on again for the following year. That's my way of handling that question.

1140

On the question of minority rights, I alluded to it in my opening remarks. There is a concern there. There is always a concern about the tyranny of the majority. We do, however, have a Charter of Rights and a Human Rights Code, and I think it's possible with those mechanisms which preserve liberty and which are designed to protect individuals from the tyranny of the majority and the tyranny of the states — with those constitutional measures that we have in place already, I think some of the concerns one might have about referendum voting are allayed, because the courts would still retain the authority to disallow, to strike down legislation which violated those provisions of superior law.

Mr Hastings: Aside from the logistics and the mechanics and some of the side issues dealing with referenda, do you see referenda or plebiscites — we've usually only concentrated on referenda — as in any way anti-democratic or undermining the parliamentary institutions we already have rather than the other side of the coin which would be strengthening and advancing and promoting individual responsibility, rights and that sort of stuff in the general community?

Mr Deverell: In my view, they are a supplement. The main lawmaking exercise still takes place in this building, for most purposes, but the referendum mechanism, in its citizen-initiated variance, is the one that's novel. Now any government that wants to have a referendum can have one; it's just that very seldom does a government find it expedient to do that. In Canada, three in a century: prohibition in 1898, conscription in 1941 and the Charlottetown accord — three in a century. Obviously as a general rule governments do not find it expedient to hold referendums.

There will be more referendums when they can be initiated from someplace outside the control of government. That's why we sort of indicated an opportunity for a bargaining process so that the Legislature could say: "Oh, we had some kind of a consensus or an understanding here, or if the majority government of the day simply does not have that priority, but now that the referendum petition is under way, we may have to deal with this question that otherwise we would've preferred not to deal with. How shall we deal with it?"

We've outlined that process by which the government will either take its chances at seeing its alternative defeated in a popular vote or bargain with the petitioners to produce a piece of legislation they both find acceptable.

The Chair: Thank you very much, Mr Deverell, for your presentation and the input you provided to this committee.

HASTINGS COUNTY RATEPAYERS ASSOCIATION

The Chair: I'd like to call forward our last witness for the morning, Mr Trueman Tuck, who is representing the Hastings County Ratepayers Association. Welcome, Mr Tuck.

Mr Trueman Tuck: I am pleased to be here. That was a good question. I liked that one about the minority interests. I've got one I may divert from. We exist today as the Hastings County Ratepayers Association because we don't feel that the current lawmaking process represents the majority who pay the bills, who have lived in the society for a long time and haven't been active, because we don't have time to come this far.

This is a history-making moment for me to be here even, because I've got businesses to run. I didn't get back until 1 o'clock last night. I had hours of work to do, and unfortunately the people who principally pay the bills in our society and the people who have been the basis of the entire democracy, the law system and everything, really feel today that they're not being represented by anybody.

Our experiences in Hastings county over the last three years, which I won't bore you with — Doug Rollins can fill you in on it — have taught us many, various sad lessons that our local members of Parliament are largely influenced by farm groups that like to get low taxes and exclusions from business taxes and \$150 million-plus on tax help where nobody helps any of us with any of our taxes.

Taxes are like a glass of water. If you have certain people not putting their share in, somebody else is going to have more than a full glass. We've discovered, through the county process, that we, as residences, cottage owners and people who have chosen to live in rural Ontario, really have nobody to protect us against the government systems.

The whole way MVA was put into effect in Hastings county, which you can study from your press clippings and from your local members, it was sold by the regional assessment office on a horse-and-pony show, taking a massive report like this coming to our councils at the end of August and trying to get all those councils to vote on it at the end of August without even having a chance to study this most important decision they had ever made in Hastings county on taxes. They were trying to get it smoothly through and approved by September 28. We fought it, and we're still fighting it. All this has done now is create a new political force in Ontario; the silent majority is no longer silent.

You've heard from several groups, the Ontario Taxpayers Federation and others this week. We are now organizing to be heard. Our concerns are very simple. From the experiences we've had, we're not convinced we even have a democracy in Ontario. We're not convinced that our members of Parliament are even prepared to listen to their constituents. We're not so sure that the members of Parliament, with how you're currently structured, in your nominating processes, in your party whip systems, in your inner and outer power circles, have any room to listen to your constituents.

I won't go into great detail, but the experiences we've had in the last six months are horrifying. Even something so simple as the freedom of information act, which is very similar to what you're looking at today, is a great idea, but if we can't go through the freedom of information act and get the computer discs on the data that we need to properly defend our rights under the Assessment Act, without getting stonewalled with \$7,500 bills at 25

cents a photocopy for a mass of data that we don't even want — we just want the computer discs.

Freedom of information is like what you're discussing here: It's a great concept; it makes the citizens feel secure that there is a democracy. But if the bureaucratic process is such that we can't get key information, such as computer discs, without getting letters like I have here for \$7,500 in advance, then the best of intents to create a friendlier, more constituent-user society is not occurring.

We also have copies recently of a new policy of the regional assessment department. Anybody who's representing a taxpayer, other than the taxpayer, has to pay a minimum \$25 fee and 25 cents a photocopy to get the information they need to properly appeal their taxes, which is a fundamental right under the 1990 legislation.

We would like to believe that there really is a concern in the current government here in Toronto, that you do want constituent input, but as you can see by my outline, we believe that politicians have failed to recognize and respond to the growing demand on the part of the electorate for value for their money and competent and fair leadership. Government decisions are more political than realistic and do not reflect the opinions of the majority of the citizens.

Government decisions are made in isolation, based upon either (a) the bureaucratic recommendation or (b) a party's hidden agenda or political expediency. In almost all cases, the laws are created for self-justification and preservation instead of growing out of a genuine need developed from the grass roots. The political power centres have caused our governing system to decay into a self-interested, corrupt reality.

There is definitely a need for referenda and other reforms to give the ratepayers the principal say in how their money is spent and the type of society that is created around them.

The Hastings County Ratepayers Association started as the Moira Trent Watershed Action Committee in 1992 and is a coalition of concerned ratepayers in Hastings county. The HCRA is committed to ensuring that the voices of those that pay the bills are heard and acted upon by our elected representatives. Today, our membership includes 11 ratepayer groups, three municipalities and concerned ratepayers and businesses totalling in excess of 3,000 properties in Hastings county. This represents more than 6,000 votes and a large part of the wealth of Hastings county. The votes are actually more powerful than that, because about a third of our membership is seasonal, and they own homes and businesses in other jurisdictions. About two thirds of our membership is permanent, and a very high percentage of them are now being business people and people with investments and things like that. You're getting a whole different category.

1150

I was quite surprised. I'm on the finance committee for the Ontario chamber. It was interesting when I went to the meeting there and found that there was another person on that same finance committee who was heading up another group. So there's a whole political change occurring now. Business people, the silent majority made up of all walks of life, we control the majority of the

wealth in Ontario. We control the majority of votes in Ontario. Yet we have been the ones who have the least ear of the people in the halls of power.

The HCRA has been strongly opposing the hasty implementation of market value assessment in our county. It was irresponsible for the newly elected provincial Conservative government to permit the local assessment office to bring a complex impact study to our councils in late August, attempt to force county approval on September 28, 1995, and then rush to implement on January 1, 1996; all of this without any prior public meetings, notice or time for input. This is a violation of our trust in the Common Sense Revolution.

There have been no tax reforms on the many existing faults. The whole process has been sold on the basis of farmers and businesses paying too much and homes and cottages not paying their fair share. This is not true when tax rebates, tax deductions, publicly funded assistance and other factors are netted in. The votes in support are self-interest-oriented, with those benefitting most pushing for immediate implementation and being encouraged by the assessment office.

I'll give you an example of one of the lessons we learned. We studied each council to find out who moved the motion. We found out what businesses they owned, what sons and relatives they had in dairy farms and things. I'll give you an example. I won't mention any township, because we've tried to take action on it. One of the principal townships that changed its vote from September that caused this to come down our throats, it was moved by the deputy reeve of that township. We knew that he had a major business in the township. So we did some research. We estimated that he was going to save \$15,000 to \$20,000 a year by being the mover of the approval in that township for market value assessment to be implemented immediately on January 1.

We called the Solicitor General, we called the Attorney General, we called some high-level contacts to find out whether the task force for investigating these things still existed, and we were stonewalled everywhere. We could not get anybody to investigate. We have at least half a dozen cases where we feel these different people who moved this action potentially violated either criminal or other things.

We hired expensive lawyers to understand what the conflict-of-interest laws were, what the breach-of-trust laws were, what actions we had as citizens. We've come up with a new term. We call it the Teflon-coated municipal officials, because we found out that unless we were prepared to put up a retainer of \$10,000 or \$20,000 per person under the conflict-of-interest process and go through a whole bunch of hoops, 90 days from date of discovery and a whole bunch of other things, we didn't have a hope of bringing these people to account.

The Solicitor General wasn't any help. Municipal affairs wasn't any help. The Attorney General wasn't any help. Finally in frustration we went to the local OPP. We went over all the details. They told us basically that this is the type of evidence we had; that, yes, our lawyer had been correct that the criminal activity was our best chance at the lowest cost to us.

We received some nasty letters from a lawyer representing this councillor. We sent back some letters to them stating who we were and who our membership was and we really liked buying their product from their plant and there were hundreds of us who were customers of his. Then all of a sudden a few weeks later he resigned. I guess he hopes now the whole thing has gone away. But anyway, that's one of the lessons we've learned as a group, the type of things we wouldn't normally have ever been exposed to as the silent majority.

We studied the Assessment Act. We've hired two law firms. We're seeking legal opinions on various components of the Assessment Act. For instance, the Assessment Act is very specific at requiring market value assessment, so one of the things we puzzled over is if that act was put in in 1990, then was it legal for the government to be collecting taxes on a different basis? There were a whole bunch of technical questions about whether the existing laws are even being followed by the government or the bureaucracy, and those things are still going on.

Then all of a sudden we began to learn more about how our laws were made, why so many properties are excluded that use the services and it gets dumped back on us. Why are nurseries and fur-bearing producers and apartment buildings and farmers excluded from business taxes, where everybody else in our society has to pay business taxes? There are all types of oddities in the law that we began to discover, because we had never read the law, and we certainly had never hired top lawyers to go over the law with us. So there's a whole change that's happening with us.

There needs to be a definition of property taxes, and it is critical that all properties involving services pay their fair share. This includes government buildings, schools, churches etc. There can be no fairness to property taxes, in our opinion, without this change and a direct relationship between the consumption of services and the taxes paid.

The fight has taught us some bitter lessons that we'd like to share with you today briefly. If you live, work or play in rural Ontario, you have no representation at the municipal, county, provincial or federal levels. The power is in the rural caucuses, which are dominated by farmers. I understand in the rural caucus here we have 12 of 13. We did meet with Gary Fox. We did meet with Doug Rollins. We have gone over this with our local members. We have done research on what moneys they receive.

In a discussion with Gary Fox we said: "We don't mind helping food-producing farmers, that's important to us, but why are we helping all these other people? Why somebody with a Christmas tree? Why somebody with investment land? Why somebody with sod farming? Why the definition of income at \$7,500 for our taxes to go back to people? We want it at \$25,000 or more. If a person doesn't have a real business and doesn't have real income principally from food, why should they be accessing one single tax dollar of assistance, federally or provincially? What's fair about this?"

Gary Fox indicated in the discussion that they had looked at a change of the income levels and he had thought of the \$25,000, by coincidence, and if they

increased that, it would knock out over 50% of the less than 40,000 farmers receiving almost \$1 billion of federal and provincial assistance directly and indirectly now. He said that would create a hardship on the older farmers. I said, "Well, you just jacked up the taxes \$500 to \$1,500 on all the seniors trying to hold on to homes in Hastings county, and there are 10 to one of them over farmers being affected, and nobody seems to be batting an eyelash." There's something wrong with this picture.

The provincial cabinet ministers appear not to be really interested in real grass-roots input and are currently not committed to representative democracy in Ontario. We've been trying since April to meet with the Minister of Finance and the Minister of Municipal Affairs and Housing. We believe, in our membership, that if any of you — and you're all invited — will choose to come and sit down with our executive in our riding and talk to the silent majority, you'll find that there's a lot of wisdom, there's a lot of good ideas on how we can not be at war with each other, not have a society with minorities and majorities and all the things all feeding off the public tit — excuse the expression — the way they are now and causing our taxes to go up and causing our job competitiveness to go down and creating a very ugly scenario for the future for all of us in Ontario.

We do not believe that currently there is any such thing as democratic representative parliamentary government in Ontario. We congratulate the government and this committee on opening the floor to this discussion, because this, to us, could be the starting point of getting back to a real representative democracy. That addresses the issues of the minorities too. Some time I'll tell you another story, as a white male.

When the equity legislation went in a number of years ago, having worked in the government a number of years I understand how power works and what goes on. I said to my friends when this whole equity rights thing started that it's like a teeter-totter. If you're going to come in and say that we have 2% employment of francophones in the provincial government and their representation of population is 5.5%, then it's like a seesaw. If you put a program in to boost that percentage and that percentage now becomes 8% and 9%, then you've become discriminating against the other piece of that full pie now that isn't in right balance, and it's a nightmare that'll never be right. There's a difference between constitutional protection and fairness to every citizen of our society and those types of manipulations that can destroy our society. We have serious problems with that now in a lot of different ways.

1200

Lesson number four: There's no such thing as just and fair taxation. We mentioned to the local member of Parliament that we get a kick out of it whenever we hear this cost-per-student statistic that's so popular in government circles today. We asked the member of Parliament, "Does that include what we, as residences and homes, pay for school taxes that they don't pay on all the services they receive?" The member of Parliament turned a little white and said, "I never thought of that before." Schools don't pay taxes and they're a major consumer of municipal services. In all these fancy statistics about cost-

per-student, "So proud of how good a job you're doing or somebody's doing," it's not a true number. If I did that in my business or to my board of directors they'd fire me for misleading them on a major financial component.

There's a growing number of very angry ratepayers who are fed up with paying the bills and having very little say in how their money is spent.

The laws and systems have been deliberately designed by the governing class to ensure that they are not accountable to one ratepayer who pays for everything. This goes back to this conflict-of-interest legislation. We became very aware that the laws had deliberately been designed not to let a municipal official be easily accountable to a single concerned constituent who had limited personal finances to have them investigated or looked at. What are we going to do about it?

We're here today to request major changes in the entire governing system to ensure that there is real representative government in Ontario. We're no longer prepared to have people spending our money carelessly on things we do not agree with. We are also no longer prepared to permit our elected officials to answer to anyone else but their constituents. To us that's the key to this. The principal decision-making of the member of Parliament at any level or of any council has to be to their local constituents. The party, the friends, the people they rub shoulders with regularly, the people they golf with, the lodges they're involved with, the churches they go to, all those things have to be secondary.

What you're discussing in this committee this week could be a giant step forward to opening up that whole question. In our opinion you can't do referenda without dealing with whether we want to have a democratic representative society, and if you want to have that, there are other things that have to go with part of the package which we've detailed here. I won't go over the individual proposals because I want to leave some time for questions, but you can see from the proposals what we're getting at. You've got to clean up the nominating process. When you have people like Chrétien federally — that's a safe example in a provincial room — parachuting his selected people in and not letting a constituency process come up with the raw material that will become our lawmaker, that's an insult to our intelligence; that's an insult to our democracy. I know I won't vote for Chrétien and I think there are thousands more like this.

This is sensitive, but we're not trying to be politically correct; we're trying to shape a society we're all comfortable with and we have to get over this political thing: When you see federal Liberal policies dealing with gay bill rights, dealing with capital punishment the way they do and then ostracizing individual members of their caucus who are prepared to stand up and say, "I view gay activity as not an appropriate or proper behaviour in a society" — I have the right to say that. I consider that to be deviant behaviour in my set of values and I shouldn't be lambasted for that. We should be able to have that within your party caucus and we should be able to have it within the decision of what your legislation is. Anyway, the proposals I think are quite clear on where we're going with it and why we're dealing with it.

There is a revolution happening that no one can stop. Elected officials have lost the trust and respect of the majority of citizens.

As an aside here, I worked in the federal government and put in a lot of my time and effort and took great pride in what I did, and it used to really annoy me when I'd go to parties and they'd call me silly civil servant and things, so I understand that there are a lot of members of Parliament with great integrity and great concern about these same issues. I don't want anything I've said here today to be taken in any other vein than us saying: "We've got to have a dialogue about this stuff. We're angry and concerned about what's going on around us."

The term Common Sense Revolution to us is not just a cute, timely political term. It's designed to get someone elected so that they can continue the old politics. To us it is time to demand access to the halls of power. He who plays the bill should have a say in the tune that is being played.

The system has taught us not to trust any political party or elected official. Our fight for fair taxes and proper representation has taught us that we have to join forces with other like-minded individuals and organizations and create a new political reality, which means changing over 100 years of farmers controlling the government in rural areas at all levels of Ontario. The MVA fight has taught us that we pay almost \$1 billion a year to support agriculture in Ontario directly and indirectly; this to support fewer than 40,000 farmers. We have learned that if "farmers" is redefined as food producing only, with principal incomes for agriculture or food production of \$25,000 a year, this number is reduced by more than half. Most important of all, we have learned that we control more wealth and votes in rural Ontario than the farmers. We have also learned that no political party can afford to ignore the risk we have become to any desired future mandate to govern either provincially or federally.

Are you listening? Are you prepared to sit down with us? Are you planning on trying to be re-elected? We will be in touch with you shortly. We're looking forward to the next election. Are you? Trueman Tuck, chairman of the Hastings County Ratepayers Association.

Mr Silipo: There's a lot that we could talk about, Mr Tuck, but time not allowing, I simply ask you how you see — I know your proposals talk about things a number of people have suggested that we put together, and I suspect that we'll be looking at, in one way or another, at least some of those, many of those as part of this process. One thing we have been seeing in a number of groups is the sense that we've got to be able to sort out when we use a referendum versus when we do not use it. What I find useful is that there are some comments you made that I would disagree with very strongly but there's a lot in what you're expressing that I find myself in agreement with in terms of the frustration that your group feels and the reasons for that.

I appreciate that you're suggesting a referendum really is one piece, but a number of other things need to happen to make our system more democratic. I would appreciate it if you could comment a little more on the referendum itself in terms of when we should use it, when we should

not use it, is it something to be left only for major issues or is it something that should be used on a more regular basis, in your view?

Mr Tuck: We have such an awkward situation with what the role of government is. Because I'm involved with the chamber, I have met with various cabinet ministers at different times and Lyn McLeod was in a meeting, and I asked this question in a business setting a while ago. We have to define what government's role is and then we have to rebuild the trust. Without a clear agreement among the majority of citizens on what government's role is and without any trust between all the different pieces of it, we have nothing. We're on shifting sands. There's no foundation to build any just society — excuse the expression — or deal with that.

Part of what you're referring to is if we can come to some agreement on what that's about. For instance, if there's a law that you have to balance budgets, then you don't need referenda on tax matters because that's taken care of within other parts of the framework. We have so much out of kilter that it's difficult. I believe that however we go about it, we have to get the consensus of constituents moving into the member's office, and the technology is there. It's very easy. The members can put computers in and give us a unique tax number and ask us any question, any time they want. The phone lines do it. In Kingston, 98.3 does it all the time, and I'm fascinated with how well the radio call-in seems to be common sense, like your point earlier. We've got to trust that we're decent Canadians. We've got to trust that we're going to be fair to the minority, that the majority is not going to become the tyrant of our bureaucracy and our big unions, public and private, and everything, the mess we're in. So we've got to trust the common citizen.

It's very hard to answer that specifically, but the way we're designed now it would be any major issue. The Constitution or a structural change would be the first one, most important; the second one would be taxation of any type. The other one would involve sensitive issues of capital punishment — not necessary provincial, but very controversial things where there are very strong feelings — minority rights, immigration, francophones. We won't get into Bill 8; we can talk about that, but there's a whole bunch of issues. I've said to people we can't have any financial responsibility until we deal with francophone issues and things. You can't balance budgets with so many pieces. You can't balance them without dealing with the school issues, without dealing with the welfare issues; there are 1.2 million people. Anything that's critical to the structure of society I think should go to the people.

Mr Hastings: Mr Tuck, let's focus in on one of the building blocks of a redesigned Ontario government and on all those relationships you talk about. Using a referendum question, how would you design a question that formulated a direct relationship between the consumption of municipal services, government services, with the taxpayer's capacity to pay? Since you reject MVA and all the other paraphernalia dealing with the raising of taxes through the Assessment Act that's in place, how would you design a question that focuses very specifically on consumption values, the consumer's consumption of a

given service at the local government level, and that person's capacity to pay for it?

Mr Tuck: We've talked about this. The first thing you'd have to do is get a consensus from the people and the entire system on what is the definition of property tax, so what service grouping is included in that, because to us the property tax should be a pooled fund to pay for services rendered in the local municipality. This becomes more critical as we go through our restructuring. To define easy ones: If you have a snowplow based in the community, it's easy to put it on the list and say the costs of that snowplow should be paid by all the properties it goes by or that are part of the pool of people in that area. I think you have to define what services are going to be rendered by whatever that municipal creature is going to end up being. Once you determine that, then you can go back to the three or four versions of taxes. You know there's a study group coming up. We have many different options of how to tax fairly.

Mr Hastings: But they're all valuation based.

Mr Tuck: No.

Mr Hastings: Most of them; unit value, all of them go back to value of the property.

Mr Tuck: I'll give you an example of what we propose. In my lake association we have 35 houses on a private road. They get no road service, no snow removal, no school pickup, no garbage pickup, no recycling and they're paying \$1,500 to \$2,500 a year in taxes. There has to be a correlation to the consumption of that menu of services that's going to be the responsibility and the actual use of them by the specific properties. There are two or three ways that can be done. You can do it by mill rates; you can have different mill rates on a shopping list. It's got to be a consumption relationship. There are some innovative systems in the world that are being looked at. Unit is one of them, but let's sit down and create a new one. I believe we have the ability in our society, with the intelligence and common sense we have, to create a new system. It doesn't have to be an old wheel recycled. Let's come up with an Ontario solution.

Mr Bartolucci: Let me tell you that I hope that after your presentation here today some of the obvious frustration and some of the cynicism that I sort of sense will leave and that you'll understand that there is a process in place to address some of the issues.

Let me follow up on a point that Mr Silipo made. You're suggesting that all issues of taxation be subject to a referendum.

Mr Tuck: Major issues.

Mr Bartolucci: Would a major issue of taxation such as the \$2 prescription fee to seniors be the subject of a referendum, in your estimation?

Mr Tuck: No. I was referring to structural taxation, for instance for property and business taxes and incomes and stuff like that.

Mr Bartolucci: But not increases or decreases?

Mr Tuck: No, the structural concepts of how we do these things.

The Chair: Thank you very much, Mr Tuck. The committee is in recess until 1:30.

The committee recessed from 1214 to 1333.

POWER WORKERS' UNION

The Chair: Good afternoon. The standing committee on the Legislative Assembly is now resuming its public hearings on the issue of referendums. We have with us this afternoon John Murphy, president of the Power Workers' Union, and Chris Dassios, who is legal counsel with that organization. Welcome, gentlemen. We look forward to your presentation.

Mr John Murphy: Thank you. I want to say that we appreciate the opportunity to make a presentation on the proposed discussion document.

Let me start with some background on the Power Workers' Union. The Power Workers' Union represents approximately 15,000 members throughout the power sector in the province of Ontario. The roots of the Power Workers' Union go back to about 1944. The PWU was one of the founding members of the Canadian Union of Public Employees, Canada's largest union, and continues its affiliation with CUPE, the Canadian Labour Congress, the Ontario Federation of Labour and nearly 50 local labour councils throughout Ontario. I've been the president of the PWU since 1993, and I'm also vice-president of the Ontario Federation of Labour and a member of the board of directors of Ontario Hydro.

The PWU has reviewed the government's discussion paper regarding the potential advantages of using referenda in Ontario. The paper focuses on pointing out the potential benefits of implementing a referendum process in Ontario. We agree there are benefits to be had from the appropriate use of direct democracy. However, it is our submission that not enough attention has been paid to the real negative consequences of the use of referenda in the province in an unrestricted manner. We are here today to point out the dangers of the overuse of referenda and to suggest a more principled approach to the use of referenda where such use is necessary for the proper functioning of government.

Responsible government: The system of responsible government in Ontario predates Confederation and consists of a Legislature elected to represent the people and an executive branch which is responsible to the elected representatives of the Legislature. We believe the people elect governments to manage the province in the best long-term interests of the entire citizenship of the province. If the province were to be governed by putting out fires and making decisions on an issue-by-issue basis, there would simply be no need for a government or a civil service. Responsible government, at least to us, means a system in which the government is elected for a term of several years to shape public policy for the long-term benefit of the population and to make the hard decisions that need to be made in this regard, even if it means making decisions that are unpopular at the time but will prove to be in the best interests of the province in the long run.

On pages 2 and 9 of the discussion paper, the government expresses fears that special interest groups are coming to dominate the policy debate. The government also suggests on page 3 that participation in government is "preferable to 'capture' of the policy-making apparatus by special interest groups." If in fact the government

feels it has been captured by special interest groups, it should simply resign because it is not carrying out its mandate to govern the province in the interests of the entire population. If the government does not feel captured, then there is simply no problem that would require the widespread use of referenda.

In short, the government has not presented any evidence that the system of responsible government that is the core of the Canadian identity is malfunctioning to the point that radical measures need to be taken. That is not to say that referenda do not have their place, but they should be used to support and improve our system of government, not to undermine it. In determining what is the appropriate role of direct democracy, one must always have regard to the dangers of overusing the process, which we set out below.

The disadvantages of the overuse of direct democracy can be summarized as follows:

(a) Access to the referendum process can make politicians reluctant to make decisions.

(b) The average citizen will simply lack the background knowledge and/or the time to deliberate with respect to decisions on complex issues.

(c) Referenda, by their nature, set up confrontations rather than encourage compromise and are based on an unrealistic assumption that a simple Yes or No answer can be given to a complex question.

(d) Yes or No votes simply don't reveal the intensity behind the vote. For example, it may make no sense to pass a piece of legislation on the basis of a 51% vote where the proponents were mildly in favour of the legislation whereas the detractors were vehemently opposed to it.

(e) The referendum process can be captured by wealthy special interest groups.

(f) The frequent use of referenda can lead to democracy without responsibility, as each person being consulted would bear no individual responsibility for the decision that follows.

(g) Referenda are expensive.

The unrestricted use of referenda can lead to disastrous situations such as those that have occurred in California. In the November 1990 midterm elections, there were 20 questions on the California ballot. Every Californian was sent a 144-page booklet which explained the referendum questions.

Statutes and constitutional amendments developed by the Legislature and submitted for popular ratification tend to be approved, whereas citizen-initiated legislation is much more likely to be defeated, which makes one wonder whether the unbridled use of referenda is really a mechanism for direct democracy as opposed to a mechanism for the government to get the legitimacy of a favourable vote for its policies.

In California, special interest groups are the primary organized participants in California elections and referendum campaigns. They play a key role in getting issues on the ballot, and they hire paid professional circulators to get the required number of signatures on the initiative petition. In short, MacDonald calls the process of citizen initiatives in California "big business" belonging to public relation firms, media consultants, public opinion pollsters

and direct mail specialists. Of course, this is the exact opposite of the direct democracy that the government hopes would result from the implementation of a referendum scheme in Ontario.

In short, unrestricted use of the referendum mechanism is a recipe for handing power over to well-organized pressure groups and not a recipe for achieving direct democracy.

1340

Having said all of the above, it should be made clear that much of the disadvantage related to the use of referenda is closely related to the frequency of their use. In jurisdictions where direct legislation is used frequently, voters are more likely to reject than accept citizen-initiated referendums. In jurisdictions where referendums and initiatives are common, voter turnout tends to be the lowest and those who do vote are usually more affluent and better educated, and so represent a specific subset of the general population.

The overuse of referenda leads to low voter turnouts and destroys the legitimacy of the process. The issue then, in our view, is which types of issues lend themselves to the use of the referendum.

It is clear to us that certain issues transcend the role of responsible government and the electoral process and must be subject to the use of referenda. In particular, decisions made by the government that would in law or in fact bind future governments should be subject to the referendum process. These are issues which have, for all practical purposes, a permanent effect on Ontario society and must be determined by the population as a whole. Mandatory referenda are necessary in such circumstances.

One such issue is constitutional amendment. The very basis of government is the Constitution, which in a very real way ensures that government is run for the benefit of the citizens. An amendment to the Constitution should be made only with the concurrence of the public whose rights are guaranteed under the Constitution. Such changes would bind future legislatures in law and should not be decided simply by the government of the day.

Furthermore, decisions that will in effect tie the hands of future governments for all practical purposes should be made by citizens. In this category, we would put the privatization or dismantling of major public institutions. For all intents and purposes, once a public institution is sold, the chance of it being repurchased is almost nil. Of particular concern to the PWU would of course be the privatization of Ontario Hydro, but other institutions such as the LCBO would fall into this category. The citizens have paid for such institutions and it should be their decision to make as to whether they are fundamentally changed.

Also, as a matter of principle, institutions such as Ontario Hydro, which were created as a result of popular votes, ought not to be deconstructed, sold or otherwise fundamentally changed without the population agreeing to it. What the citizenry has decided should not be undone by the government of the day without the citizens agreeing.

How can the government reconcile its professed belief in direct democracy with the fact that section 7 of

schedule M of Bill 26 provides for the dissolution of local boards, including public utility commissions, without a vote of the electorate, the same electorate that voted in favour of public power in the first place? The government should live up to its claimed support for direct democracy and mandate the use of it where government proposes to interfere with decisions that the electorate made in the first place.

Finally, in the spirit of using referenda to support the current system of government, it would be appropriate to permit the use of referenda to break any deadlock that occurs in the Legislature.

In conclusion, the evidence available supports the view that the sparing use of referenda can be a real benefit to society without undermining the role of representative government in the province. On this basis, we propose that referenda be mandated in the following circumstances: first, where a constitutional amendment has been proposed; second, where the government proposes to take a decision that would, for practical purposes, bind future governments, such as the sale of Ontario Hydro or municipal utilities; third, where the government proposes to fundamentally affect institutions that were created by public will — again the example being Ontario Hydro and municipal public utilities; and fourth, where the legislative process has reached a deadlock.

The use of referenda in the above circumstances will ensure that direct democracy will protect the interests of the population and will not turn into either a very expensive polling process or a make-work project for lobby groups. The approach will, we believe, ensure the continuance of both a responsible government and a responsible electorate.

All of which is respectfully submitted.

Mr Hastings: My Murphy, thank you for a very enlightening submission. I would like to query you on two items. One, given that you point out on page 5 of your submission that referenda can be expensive — and we've had some numbers thrown around here that they could be \$28 million to \$40 million etc — and there may be a high cost involved in the implementation of the mechanics and the logistics of getting such a process operating. Don't you consider that these numbers are relatively out of touch with reality when you factor in new information technology, telecommunications that can bring the costs of that sort of referenda down over time, that in other words, \$40 million or the 1992 Charlottetown \$100 million wouldn't be a regular type of cost feature of referenda?

Mr Murphy: Yes, we use the figures, the data, in terms of the cost based on the information that was available to us, and that's not to suggest certainly that technology can't bring down that cost. But I think from our perspective, what's more important is that if we're not to undermine the current mechanisms that we have in terms of government in the province, it's really important to have clear-cut criteria as to what's appropriate to bring to a referendum. That's the key point we're trying to make. Certainly, the monetary factor is a consideration, but not the major consideration. The major consideration should be that we have a process that works, that certainly can be improved, but we should have clear-cut criteria

under which circumstances we'd bring what issues before the public to vote.

Mr Hastings: Does your group have a fundamental fear with citizen-initiated referenda, provided there were sufficient safeguards instituted in referendum legislation, such as minimum thresholds, 10% of eligible voters from the last election, a requirement about getting a minimum number of signatures on a petition, if that's the way it went, in order to even qualify? Because the New Zealand experience clearly indicates that in two attempts in the mid-1990s they couldn't even get the minimum numbers for the questions those groups wanted to submit for a referendum question.

Mr Murphy: We wouldn't have a concern provided that the issues were restricted to the other categories that we described. If it's restricted to those broad categories that we described, we wouldn't have a concern. We would have a concern if it goes beyond that in terms of the impact it has on undermining the responsibilities that you have as government.

Mr Hastings: Any concern about use of referenda vis-à-vis minority rights and how they're already fairly well protected under charter, constitutions etc?

Mr Murphy: We would have a concern in terms of the negative impact it would have around minority rights. But let me again go back to the criteria that we put in place and the issue of minority rights. There's a government elected that's obviously going to make decisions around what's appropriate when it comes to minority rights. Those decisions are not likely to be irreversible by a new government that comes in, so therefore, from our perspective, would not fit the criteria of being put to a referendum. We think that, as I said, the criteria will be of assistance to government in making sure that we don't end up dealing with issues that ultimately would be detrimental.

Mr Hastings: Thank you for your remarks.

Mrs Munro: Thank you for your presentation. I have one question that relates to information that we've received from other presenters, and that is the need for education, the idea that we have to have an educated public participation. You've identified that there are certain areas that you feel would fall into the category of ones where it would be appropriate to have referenda. I just wondered whether or not you would like to speak to that issue of the development of an ability of public participation. Do you see that as a necessary adjunct to any of this?

Mr Murphy: Absolutely. I think it is an excellent point and maybe one that we really should have probably beefed up or highlighted in our presentation, which we didn't. But I agree totally that once we go through the criteria in terms of public referendums — and again, if I use my favourite topic of Ontario Hydro potential privatization or municipal utilities being sold off, if I use those as examples, if in fact those issues are put to public referendum, then I think education on the issue, having information available to the public so they can make informed decisions around those issues is critically important. For any process which leads to a referendum, I think that broad knowledge base information to the electorate is extremely important for it to be successful.

1350

Mr Bartolucci: I'll just follow up on a point that Ms Munro was making with regard to public education. Do you think, Mr Murphy, that there should be any controls as to how much money is spent on this public education which can, by definition, be interpreted as lobbying for either side?

Mr Murphy: Whether it's running a union or running a government or running the province, my guess is that there always needs to be controls in terms of money that's spent. From my perspective I think the issue really is making sure that, if a question is going to be put, there's at least sufficient information available for people to be able to make an informed decision. I would hope that part of the controls of making sure that sufficient information is available for people to make an informed decision is that it doesn't turn out to be simply a mechanism of lobbying, government using it as a lobby; in other words, to get what they would like to see as a result. Presumably the purpose of it going to the people is to have the people's wishes expressed and that it's really used as an educational vehicle to make sure the people who are voting have all of the sides, all of the issues and all of the information available to them to make an informed decision.

Just to wrap up on that issue, I think it is important. In any structure you have to have financial limitations, but they should be built in such a way that there is sufficient information available to people.

Mr Bartolucci: And that should be written in the legislation, correct?

Mr Murphy: I think it would be helpful to have language that would make sure that there's some guidelines. It would be my sense it would be helpful.

Mr Bartolucci: Maybe we could follow up on a point that Mr Hastings made with regard to threshold limits. What percentage of the population do you feel would be an adequate or fair threshold level? The second part of that question is: Should that reflect all different regions of Ontario?

Mr Murphy: I hadn't really given a whole lot of thought to an exact precise number in terms of the percentage. I'm not trying to dodge the question. What I would say off the top of my head is that the percentage should be large enough to make it significant.

In terms of being representative, if the issue is an issue that impacts on the province as a whole, then the request for that should be representative of the province as a whole as well. Chris, did you have anything to add?

Mr Chris Dassios: We approached the issue, not from the perspective of initiatives and percentages of people that you would need signing on to a sheet to get something before the government, but from the perspective that there are certain types of issues that need and must be subject to the referendum scheme. They would arise largely by proposals made by the government, frankly.

If the government is proposing legislation, the normal course of it is it'll be debated in the House, there will be hearings held and the public will have its input in that manner. However, legislation of certain types, like the Constitution or fundamental change in public institutions require citizen input. In those circumstances, when such

legislation is proposed, citizen input has to be made. It's not a question of thresholds; it's a question of that's when they get a vote.

Mr Bartolucci: That should be reflected, though, throughout the entire province?

Mr Dassios: Yes, absolutely. In terms of, not the threshold to get an initiative but the threshold as to what sort of support from the public a bill would need to be acceptable, yes, it has to be based on regions of the province. It's a very big province, as you know, with disparate interests in various different parts. Specifically in the hydro example, people in rural areas have special needs and interests in public power that differ from highly urbanized areas and that's always been respected by the government and by Ontario Hydro, for example, and any change to that mechanism should surely receive regional support so that their interests are protected.

Mr Silipo: Just to expand on that last exchange, we have had in this committee in the presentations, as you can appreciate, presentations focussing on a number of different areas, and we've heard perhaps more on the side of what are being called citizen-initiated referenda and what criteria should apply in those cases.

I appreciate your presentation on a number of grounds, certainly one of them being the fact that you're probably one of the few presentations that are beginning to set some ground for us in terms of, not just in a government-initiated referendum, but, as you've just said, when should government go to the people in a referendum as opposed to making a decision in the Legislature only? I think that's a point that needs to be underscored.

There will be those, I'm sure, who will say: What's the difference between an issue like Ontario Hydro and any other major decision that a government makes? Why should that be made subject, as you are arguing, to a referendum, as opposed to the government making a major economic decision that's going to have impact for years to come? How do you draw the distinction between those?

Mr Murphy: If you look at our criteria, one of the things we said is that decisions that effectively bind future governments are ones that should be put to referenda. In the case of Ontario Hydro, I think most people would agree that if Ontario Hydro's \$45 billion in assets were sold off, then the probability of a new government coming in and bringing them back under public control would be extremely difficult, right? Essentially what we're saying is that decision effectively binds future governments, so that's an example of one of the reasons why we see it as being different and fitting the criteria around what's appropriate for a referendum.

Of course, the other one is the fact that it was created in the first case, for the most part, by people voting to create public power. Therefore, if they've had that say, to then reverse it, we think it appropriate to go back to them seeing as how they were the decision-makers. That's our thinking around that item.

Mr Silipo: You would go as far, if I've understood your presentation correctly, as saying to us that the four criteria you set out are ones that should be part of any new law that's established that governs referenda; that is, that those should be set out as issues or areas around

which government ought to go to the people through a referendum.

Mr Murphy: Yes. From our perspective, having spent some time looking at this, those four criteria, we felt, would be helpful for government to look at having as a guiding rule about when it is appropriate to go to referenda and when it is not, so that in Ontario we don't end up in the difficulties, as our brief described, that have been encountered in California and other jurisdictions. That's what we're trying to do, to say that it isn't a question that there shouldn't be any referenda, that no consultation with the people should take place. We're saying consultation is good, provided you have clear-cut criteria and this is what we suggest as being the appropriate criteria to make that determination.

The Chair: Thank you very much, Mr Murphy and Mr Dassios, for your input to this process. We certainly appreciate your advice.

PROGRESSIVE CONSERVATIVE YOUTH FEDERATION OF CANADA

The Chair: Our next presentation is by representatives of the PC Youth Federation of Canada, Tasha Kheiriddin and Walied Soliman, representing that organization. Welcome to the standing committee on the Legislative Assembly.

Ms Tasha Kheiriddin: My name is Tasha Kheiriddin and I'm the president of the PC Youth Federation of Canada.

Mr Walied Soliman: I am Walied Soliman, president of the Ontario PC Youth Association.

Ms Kheiriddin: I gather you all have a copy of our submission which is entitled Money, Speech and Power in Referenda. It's definitely an attention-catching title; that was the idea. Before I begin, I'd like simply to say that the basis for presentation of this document and the basis for appearing before you today stem in part from the participation of members of the PC Youth Federation, including myself, in the past two referenda which have taken place on a national level on the question of the Constitution, and on a provincial level on the question of sovereignty in Quebec. Based on these experiences, and particularly the experiences in the Quebec element of those referenda and working with the Yes and No umbrella committees, we have prepared a basic presentation on what we perceive as the advantages or disadvantages of the type of structure presently in place in Quebec.

The analysis that will be made is not simply limited to Quebec; it encompasses other jurisdictions as well where we have seen the effects of expenses. Before I proceed with that substantive part of the presentation, I would like to ask Walied to simply discuss the general issue of the legitimacy of referenda, which we do not question but feel should be addressed nevertheless at the outset of our presentation.

1400

Mr Soliman: One of the things that has intrigued me about the political process, as president of this organization, has been the great debate about representative democracy versus other populist instruments such as referendums. Canadian representative democracy would

have been described probably very eloquently by John Stuart Mill, who said that the whole people or some numerous portion of them exercise through deputies periodically elected by themselves the ultimate controlling power, which in every constitution must reside somewhere. Representative democracy is therefore essentially the transfer of power from citizens to their representatives.

The political culture of the 1950s and 1960s was very conducive to this system, as it was a period of great economic growth and great disposable income. This allowed for a political system that was a lot more trusted and political parties that were a little more trusted. The transfer of this essential human element of power was therefore a lot more easy and lot more accepted by the general public.

The political culture of the present day has changed dramatically. In 1992, a Gallup poll suggested that one in every 10 Canadians has a great deal of respect for, or confidence in, political parties, which is something that is not very good but nevertheless is the reality we have to deal with. Essentially, what this proves is that the political culture in the country and in the province has changed from that of the 1950s and 1960s to that of the 1980s and 1990s and beyond, which tells us that as the political culture has changed, the process of doing democracy has not changed, which puts us into a position where we have a crisis of legitimacy of the political process. With this, of course, further demands on the system will arise. Populist political instruments such as referendums will thus be called upon.

I draw your attention to the second package you received. You've received two packages, each of you. I'm also a political science student, and one of the interesting ones I pulled out was "Canada's political system." You have an interesting diagram there of the several levels between the executive branch and the legislative branch, and then of course your voter.

Mr Silipo: This isn't the Ontario system you're describing.

Mr Soliman: This absolutely is not the Ontario system. Nevertheless, it is a political reality or something at least that is definitely perceived in Canadian and Ontario society at the present time. How can we rectify this situation? To rectify this situation, we must look for, as one of the quotes right at the beginning of the report cites, the fact that we should maybe have a little more democracy or referendums, for example, or other political instruments that will give people more of a feeling of legitimacy for the process we're involved in.

There are two extremes when it comes to making this process even more legitimate. We could look at the British system or the American system. In the British system, referendums are not as generally accepted. Democracy is an important aspect of their life over there. Certainly they elect, for example, their leaders from their representatives in the Legislature or their House, not as we do, for example, in Canada with our members of political parties, whereas in the States they do it with millions and millions of people.

What I think we have to do here in Ontario and Canada as a whole is find the fine line that's crossed

right in the middle there. We must restore legitimacy to our process by, as Patrick Boyer put it in his book, allowing our citizens to go from passive spectators to active spectators.

Obviously, one of the most interesting examples of referendums in the country has been the Quebec process. Before we get into the gist of it, I'm just going to go over the Referendum Act, or do you want to —

Ms Kheiriddin: Actually, before that I'll just outline basically the goals of the presentation and the structure. We are going to attempt to answer three questions. The first of those is, are the financing limits of the type imposed by the Quebec Referendum Act effective or justified? If not, are the umbrella committees themselves warranted or do they constitute an unjustified impediment to free speech and participation in the referendum, which is supposed to be a free and democratic process? Finally, we are going to see if there are any recommendations that can be drawn based on the findings of the answers to these two questions. In order to answer these questions, it is first necessary to give a brief overview of Quebec legislation. Before Walied proceeds with that overview, I will simply give you some background as to how the Quebec legislation, which is one of the first models of its kind to use the Yes/No committee system, was introduced.

In 1977, under the government of René Lévesque, the government of Quebec commissioned a white paper on referenda. One of the key goals of this paper explicitly was to regulate spending. The idea was not to have one dollar, one vote, but one citizen, one vote. This objective runs through the entire white paper itself and runs through the Quebec Referendum Act in consequence, which was based on that paper.

To solve this problem, which was perceived as being one dollar, one vote, the act introduced two umbrella committees. This concept exists in only one other jurisdiction in the world that I'm aware of, which is Britain. In fact, the Quebec act, ironically, is based on a British model, on the British sense of fair play. It was introduced by René Lévesque, but there you have it, anyway. This Yes and No committee system is designed to control spending. But at the same time, as a result, you may have a deleterious effect on participation in the process. Walied will outline exactly how a referendum bill or a referendum proposal makes the sort of trek from the government to the people. Maybe that will give us a preliminary indication of what the effects of the Yes and No umbrella committees are.

Mr Soliman: I think everyone has in front of them now a copy of the point-by-point summary that we put together on the Referendum Act of the province of Quebec. Just to quickly go through it, I put together 12 points that outline some of the major goals and objectives in the bill.

First of all, a Conseil du référendum is established, and this council is composed of three judges within the Quebec court. The Conseil du référendum shall have exclusive jurisdiction to hear any judicial proceedings relating to a referendum. They're the ultimate controlling body of the referendum process.

The government may order that electors be consulted by referendum in one of two cases. The first one is on a question approved by the National Assembly, which in our case would be the Legislature, on a bill adopted by their Legislature. There are more lenient rules for debates in their assembly when it comes to the bills on referendums, which is something that is interesting.

The referendum must be in the form of a question.

There is no duplication in the same Legislature.

One of the things, of course, that Tasha has already touched upon is that there are two committees established and recognized by the government, one for and one against. Any organizations that would like to participate in this process would have to participate under one of these umbrella committees.

There are equal government subsidies for both committees. The maximum contribution of an individual to one of the committees is \$3,000. There are several expenses that are not regulated. Regulated expenses shall be limited so as never to exceed for a committee, during one referendum, \$1 per elector.

Ms Kheiriddin: One of the things that also should be noted is that the subsidy that is provided by the National Assembly, the Quebec legislative body, to each committee is an equal subsidy. That is topped up by, as Walied said, individual donations, as well as loans from political parties, up to a maximum of 50 cents per elector.

One of the results of this process is that referendum bills in Quebec are usually party generated and the referendum process consequently is often party controlled. This may not have been the original intent of the legislators, but it is one of the facts that I, being involved in referendum campaigns, personally have witnessed.

It's obvious that a great deal of regulation surrounds the financing and surrounds the spending. All spending must be authorized by these committees. An individual who spends money can be charged with breaking the law, as has happened and will be discussed further.

1410

The question we wanted to answer was: Are these regulations worth it? Do they have a goal legitimately and do they serve their purpose? In studying effects of spending on referendum outcome — which is the section of our report which begins at page 8 — we have found that there is no discernible correlation between spending on referenda and the outcome, which was somewhat surprising but seems to be across the board. We examined case studies in Switzerland, Britain and California, and there was also a case in Norway, where essentially different authors had studied referenda over the years and had examined what the results were of spending by different groups. The result was that there was no correlation.

Just a couple of examples: In the British referendum in 1975 concerning Britain belonging to the European Community, which was supposedly the basis for the Quebec legislation, interestingly enough, chief electoral officer Pierre Côté cites that example as a place where the pro-European forces triumphed and outspent their rivals 10 to 1. However, author David Butler, when he analysed the British vote, found that at the outset of the campaign, before even a dollar had been spent, there

were already polls predicting a 2 to 1 victory for the pro-European forces. In fact, the final result was 67.2% vote in favour of remaining a member of the EC. So it's hard to say that the money that was spent there really made any difference.

In Swiss studies there are a couple of examples which were cited by author Kobach of Swiss initiatives where disproportionate amounts of money were spent towards the result. There was a referendum on the UN in 1986 and there was a referendum in 1982 on price controls. In both cases the amount of money spent was greatly disproportionate to the results achieved by either side.

California provides very many examples of referenda for study, as you undoubtedly all know, and in California the experience was the same. One of the more interesting referenda in California was on marijuana liberalization where only \$5,000 was spent by the opponents and \$214,000 was spent by the proponents, and the opponents won.

It's hard to say that there is a correlation between spending and results. Just to close with a Canadian example, in the conscription referendum of 1942, Pierre Côté himself, in one of the government studies we found, cites the fact that the anti-conscription forces triumphed in Quebec despite the fact that they had not a fraction of the resources of the pro-conscription forces.

We feel that in light of this, the fact that there is no clear relationship, the rationale for Yes and No committees, which is the financial rationale, really cannot stand. We note that in Quebec most recently the Quebec unity rally, was heavily criticized by Côté as an example of where money was illegally spent by companies outside Quebec and inside Quebec to bring people to a rally in Montreal which, in the final days of the campaign, some people argue, affected the result, an example of how democracy could be foiled, if you will, by spending.

However, there is no empirical evidence as to what the effect of that spending was. When you examine the total — I will refer you to page 13 simply because there is a typo and it's a number so it should be corrected — in the second paragraph, when you add the amount of money allegedly spent on the rally, which according to Côté's report was about \$158,000, to what was totally declared by the No committee, the total you get is only \$30,000 — not \$3,000 — more than the declared total spent by the Yes committee. The amounts spent were \$4,867,693 for the No and \$4,835,576 for the Yes. In other words, you're looking at a minuscule amount of money here.

Mr Chris Stockwell (Etobicoke West): And you believe those figures?

Ms Kheiriddin: I have them from the government report that was done by both.

Mr Stockwell: Oh, they must be true.

Ms Kheiriddin: We're not going to talk about the money the Quebec government spent before the referendum even started, on studies or anything else. Those are the published figures that were presented by both committees in their reports to Mr Côté. Even if about \$150,000 more had been spent on this rally, neither group would have even come up to the permissible level of declared expenditures. So we found that this was not an

example of where money can be said to have unduly affected the course of democracy.

Since, as I stated, the relationship between money and votes and referenda seems inconclusive, we wanted to examine whether the umbrella committees have another reason for being, whether, for example, they add to the democratic process or subtract from it. Based on experiences I have had personally, based on reading up on the subject, even though there is not that much literature because there are not that many of these types of committees that have existed in the world, it seems to us that they do have a deleterious effect on participation, specifically because, as Wally outlined, the creation of a referendum bill in and of itself is a party generated or government generated event.

The referendum process in Quebec is very much party controlled, and the result of that is that the average citizen does not have, in my opinion, as much input into the system as they should have. If a referendum is about popular democracy, then let the people have popular democracy.

Another result of this present system is that within the umbrella committees themselves there's a lot of jostling for position and a lot of people who want to run the show, so to speak. As a result, much time and effort is wasted on internal matters as opposed to fighting the common enemy. So for that reason we would recommend against the institution of official umbrella committees in Ontario.

To summarize our conclusions, which you can find at page 19, we have a number of proposals with respect to setting spending limits. While it appears to us that there is no real rationale for spending limits per se, public perception may be otherwise. As we have limits in elections, we feel that is a different circumstance, because in elections you're putting a person into a position of power where, unfortunately, they may be able to divert that power for uses that are not beneficial to the electors. We don't want to have PACs in this country, as they do in the States, funding individual candidates, and interest groups basically dictating their agendas. So we feel elections are a different ball game. But in referenda, we feel that spending limits, if at all imposed, should be minimal in the sense that we should have individual spending limits that are high. In Quebec the limit is \$3,000 per individual voter. We suggest that additional research be done to set an appropriate spending limit.

We recommend against having official Yes and No umbrella groups which receive public funds or otherwise. These should not be constituted. We believe that individual citizens of Ontario should be able to speak out and spend money without having to belong to any official umbrella group. However, if citizens wish to form ad hoc groups, as they do in Switzerland on a routine basis, they should be free to do so. We believe that any groups that are formed should be allowed to solicit money from citizens, but that no citizen should be able to contribute more than the pre-imposed individual limit to his chosen side, either individually towards his effort or to a group.

In other words, we would not cap spending by groups; we would cap spending by individuals, which would essentially limit the pool of money that would be obtain-

able by any group. Every citizen of Ontario would have a maximum amount of contribution they could make. Whether this Legislature decides to open that up to corporations or to interest groups is another question, in which case, if that is so, we recommend that their limit be the same as that for an individual. As a result, there would be a limited pool of money that groups would be able to take if they were constituted and if they so wished.

We also believe that every individual or group who does become involved in the referendum process through donations should be required to register, before becoming so involved, with a non-partisan, simply organizational referendum committee set up by the government, and that that registration should be simple and should not be a barrier to participation.

Finally, we think that after the referendum is over, each registered individual or group should be required to file a declaration, such as in an election, of the expenses they themselves have entailed. We think that overall this would strike an appropriate balance between freedom of speech and the sort of perceived financial clout of certain groups in society, which is a perception of the public that has to be addressed.

Mr Bartolucci: Thank you for a very enlightening presentation, and I want to commend you on your involvement. I think that's excellent and it's an example that a lot of the youth should be following.

What issues should be subject to referendum? You dealt an awful lot with costs etc, but let's deal with issues for a second. What do you consider to be those issues that should be subject to a referendum?

Ms Kheiriddin: I think, and not speaking on a necessarily researched basis, that issues of national importance such as secession, such as economic union, or issues of some moral importance, for example, such as prohibition has been in the past — abortion was an issue in Ireland — are issues that are possibilities for referendum.

1420

Mr Bartolucci: On a provincial level, it's been suggested in the paper that any issue regarding a tax increase or taxes should be subject to referendum. Do you consider that to be an issue of significant importance?

Ms Kheiriddin: I believe one of the election promises Mike Harris made was that no tax, or personal tax I think it was, would be raised without the holding of a referendum. That is a promise, I believe, that he has made. If that is what he has bound his government to, then I commend him for it because it's a very difficult thing to do, actually.

Mr Bartolucci: You know, Tasha, I'm not going to argue what Mike Harris said or the merits of it. I'm just really, truly asking for your personal opinion.

Ms Kheiriddin: My personal opinion on whether any tax increase — like I said, I think it's a difficult thing to do. I think it's a laudable thing to do. If a government has foreseen in its budget that it would be able to not raise taxes, I think that it's a pledge they can afford to make and I think that's a pledge that he has done. It depends also what you consider a tax. I hear there is some question as to whether, for example, user fees

imposed on medical services would be a tax. Personally, I wouldn't consider that a tax. If you start considering user fees a tax, you would consider other things like licenses for your car and permits for buildings and other things to be taxes, and that's not the case; that's not what the courts have said. I think, personally, that he's made a good and brave decision.

Mr Silipo: I just need to say on that last point that it was Mike Harris himself who in fact used to consider a user fee a tax; his own words. We can find a quote for you on that.

Ms Kheiriddin: I'm sure you could.

Mr Silipo: That's obviously not what we're here to discuss. But I found your discussion on the whole issue of the structure and spending limits and the impact that has rather interesting. I still come at this a little bit from the perspective on that whole structure of saying that if we're going to get into the use of referenda in a wider way, there needs to be some structure to it. At this point in time I would probably still be leaning more towards the structure that you were critical of, but I appreciate the thinking that's gone into what you've suggested here.

What I would say on that notion of fair play that you've touched upon: Don't you think there would at least be a better sense, if not an impression left with people, that if there was a structure that allowed for spending limits with caps, somehow even though that may not, as you argue, have an effect in terms of spending more money may not necessarily be shown, other than in some cases, to be what makes a difference in terms of who wins or who loses the referendum question, it seems to me in terms of the impression that the public would have — which I would argue is an important factor as well — it does play a factor in terms of people thinking or sensing that if there aren't spending limits of some kind, those who can spend more may be able to, in effect, garner a greater degree of support, public opinion, and therefore influence inordinately the results of the referendum.

Ms Kheiriddin: If I could just comment on that, I would agree with you that if there were no deleterious effects on the referendum process of having a Yes and No umbrella committee, there would be no harm in it; the public perception would be served. I agree that public perception is a very important issue that we have to deal with. But experience with the two umbrella committees has shown that if you're really trying to create a grass-roots democratic process — which is what the public is very concerned about as well — having the Yes and No committees, especially mandated by the government, creates a party apparatus. In the last referendum —

Mr Silipo: But couldn't you deal —

Ms Kheiriddin: Just to finish, in Quebec, basically it was the Quebec Liberal Party that ran the No campaign, and there were very few "non-politicals," if you will, in that committee room, which is a shame.

Mr Silipo: Yes, and I appreciate your views on that. That was the other point I wanted to pursue with you. Couldn't you deal with that issue by mandating in the legislation — the Quebec legislation clearly, from what you said, does in effect put an onus on the members of the Legislative Assembly of Quebec to be sort of at the

forefront of the process. Couldn't you similarly legislate, if you chose to, that they would play either a minor role or not play a role at all by saying that the leadership of the committee could not be held by any of the elected members?

Ms Kheiriddin: I think once you try and do that, what you're going to end up with is friends of the MNAs who are going to be in the positions. It's unfortunate but that's what I have seen, that people who are involved, even if they weren't political, elected representatives, were close to the political spectrum. What we suggest is a cap in the sense that it would be a finite amount of money that would be available to groups, that it would be individuals who give money. I'm not even quite sure if corporations should be allowed to donate to a referendum or if interest groups should be allowed to donate to a referendum. In that sense, the onus would be on the individuals. You may not have as glitzy campaigns as we had, for example, in the last referendum in Quebec, but I think it would be more reflective of what people want to see done and what people want to do.

The Chair: Thank you very much. We've got three Conservative members who would like to ask you questions: Mr Grimmett, Mr Stockwell and Mr Hastings. I would ask you all to be brief if you could.

Mr Grimmett: As usual, I'll be brief, Mr Chair. I just want to say I don't disagree with your sketch of the political system, but you might want to check the spelling of the word "sycophants"; it doesn't look right to me. We get a chance to use the word around here more often than you do.

Mr Stockwell: We get to practise.

Mr Soliman: I pulled it right out of the textbook. That's our education —

Mr Grimmett: You didn't mention, I don't think, whether you feel the referendum should be used to bind governments to make decisions or not. Do you have a position on that?

Mr Soliman: I think there are certain issues that you would ask for a referendum. There are certain issues where you would go out and have a recommendation from the people. For example, on issues such as constitutional reform or tax reform, as we promised during the election campaign, those might be ones that we would have referendums that were binding on the government. In other examples, such as things that might be initiated by citizens, those may be brought forth as recommendations to Parliament. Ultimately, the Legislature has to pass a bill and has to accept what the recommendation's results are in any case. So I would argue that.

Mr Stockwell: I want to address the issue from my own point of view personally, the opinions that I hold. It seems the public has become disenchanted and is looking to have greater say in the public input through referendums because they're no longer represented by their local politicians. I don't know if that chart you gave us is all wrong; it's probably a lot more right than you think with respect to how much input your local member has in the actual governing of the province.

I guess the question I have is, rather than going about trying to, as they say, empower the 10 million constituents who seem to be disfranchised, would it not be a lot

easier before we do that to try and empower the marginalized backbenchers so that they be given an opportunity to do what they're supposed to do, which is represent ultimately their constituency, rather than represent what they do more often than not today, which is a political party and leader?

Mr Soliman: I think the ultimate goal of representative democracy is to have all members of the Legislature or Parliament or whatever deputies are elected by the people to have that sort of direct — you know, walk right into the Prime Minister's office and tell him: "Here's what my constituents have said. Here's what I'm hearing out there." Unfortunately, you may be quite right in that this chart is at least perceived to be the reality in many parts of the country right now.

Mr Stockwell: Well, it is the reality.

Mr Soliman: You said it. One of the things I would argue is that although this is what is perceived by people out there, probably what would be the best thing is to give them some sort of an empowerment in order to increase their faith in the system, as a first step. How are you going to go around saying, "We're going to get rid of the party hacks, the shifter lobbyists and the expensive bistros"? I think it's a lot easier to legislate referendums into place than any of that.

Mr Stockwell: I guess this is where the rubber meets the road. Do you think it's easier to go out and have referendums on important issues to empower people rather than empower their elected officials?

Mr Soliman: I would suggest to you, how would we legislate empowering officials in a political culture that's changed dramatically since, for example, the 1950s and 1960s?

Mr Stockwell: How about free votes? How about voting your conscience, voting your constituency, without the fear of reprisal? How about the opportunity to represent your constituency without shortening your political career? Those kinds of things.

1430

Mr Silipo: Sounds almost like common sense to me.

Ms Kheiriddin: What is this? There's agreement on both sides. This is scary.

I would interject that I think those are valid proposals that many people are advocating, but I don't see why that would exclude having a referendum at the same time. The two are compatible.

Mr Stockwell: I think you might not need them as often. That's all I'm saying.

Ms Kheiriddin: I don't think we're advocating having a referendum, as in Switzerland they do, almost every year on some issue or more than one issue. It's for questions that are of crucial importance.

Mr Hastings: I'd like to congratulate you both on a very well thought out, highly articulate and very professionally presented brief dealing with these issues.

My question would be, do you believe that there should be no political, financed credit by either corporations or individuals or groups for participating in a referendum question? In other words, you donate money, but there's nothing reflected in the donor's tax status federally or provincially?

Ms Kheiriddin: What we have not addressed in our brief but would be a possibility would be that the person would be able to deduct that donation as you deduct for any donation, for example, to a political party, which is considered charitable. Because obviously it would be a non-profit group.

We didn't recommend loans per se because that's part of the structure we have now, and that is that a lot of parties, especially in Quebec, give money, loan money, to political causes. We felt that the involvement of parties should be, while not incredibly minimal, a lot less than it is in regular political life. For example, in Switzerland, parties are almost secondary in the referendum culture. Interest groups have a large play in many cases but parties are secondary. We think that if you want to go straight to the people, you should limit the involvement of parties in that process.

Mr Hastings: Some taxpayer groups said: "You want to have a referendum on an issue? No problem. Don't expect the taxpayer generally to finance any portion of it by giving a receipt back that enhanced your income tax status either personally or on a corporate basis."

Ms Kheiriddin: I can see how they may feel that way. However, the holding of a referendum itself is funded by the public, the logistical holding of the referendum. So in a sense everyone's paying to have a referendum whether they put forward the question or not. I think that's something that could be examined. We haven't considered it, but it's a possibility, obviously, to encourage people to participate.

Mr Soliman: Can I also suggest to you that one of the goals I would see behind holding referendums as well would be to, as Patrick Boyer put it, make our public from passive spectators to active spectators. One of the ways to do that is to have them educated on what they're going out there to vote on, what they are going to be voting Yes or No on, and making sure not only that the question is articulated in a way that everybody understands but also that the issues are ones that people can relate to and comprehend from all different angles. One of those ways, of course, to get that is having committees producing pamphlets and literature and commercials, which cost money.

The Chair: Thank you very much for your presentation. We certainly appreciate your input and advice.

BAYVIEW GLEN RATEPAYERS' GROUP

The Chair: Our next group is the Bayview Glen Ratepayers' Group, represented by Mr Howard Shore.

Just before you start, I'd like to point out to committee members that our clerk has distributed three things to you: a written presentation which was part of yesterday's presentations, additional information from a presenter which was given to us, as well as a legislative research paper that's been completed for us as part of our deliberations.

Mr Shore, you have half an hour to express your interest in this issue to us.

Mr Howard Shore: Good afternoon, Mr Chairman, committee members. My name is Howard Shore, president of the Bayview Glen Ratepayers' Group. The

Bayview Glen Ratepayers' Group is a non-profit association formed in 1995 by the residents of the Thornhill portion of the town of Markham who want to play a very proactive role in the issues which affect the livability of the commercial area and the residential neighbourhoods surrounding us.

Our group's geographical boundaries are from Steeles Avenue to just below John Street to the south and north, and from Bayview Avenue to Canadiana Avenue to the west and east. We include approximately 800 households, encompassing some 2,000 individuals. We are quite blessed with people from a wide variety of cultural and ethnic backgrounds, all of whom together help make our community the most ideal place to live in all of Ontario.

While we welcome and appreciate the chance to address this committee regarding the government's working document on the subject of referendums, my comments to you today are more anecdotal than official positions of our association — mostly, I should mention, because of the time constraints in having these hearings and our association's own time line.

Given the subject matter in question, we are all the more appreciative of this committee hearing from local ratepayers and would encourage the committee to continue both this process generally as well as specific consultation with ratepayers' associations province-wide. Ratepayers' associations are the most basic, grass-roots community organization, quite distinct from political organizations such as riding associations or from various interest groups, be they labour, big business or what have you. Ratepayer associations exist because neighbours have a vested interest in preserving and enhancing their community.

The basis for considering the concept of referendum or initiative today is the suggestion that a more direct democracy more precisely reflects the wishes, desires and will of the citizenry at large. Do referenda augment the current political process, or supplant it, thereby making our elected officials of little use?

All citizens should be afforded the basic right of democracy to govern themselves, but a mechanism should be provided to enable eligible voters to initiate laws, approve or reject laws by way of referendum proposed by the provincial Legislature when necessary.

All eligible voters should have the means to create both municipal as well as province-wide legislation through the initiative process. Provincial legislation could necessitate a certain percentage of voters from each riding in the province, or each ward in the case of a municipality, to endorse petitions to initiate laws for citizens to vote either for or against a particular issue on the ballot.

All eligible voters should have the means to either approve or reject legislation proposed at the local and provincial levels of government.

At this point I'd like to address the distinction between "plebiscite" and "referendum." What is the difference between the two, and under what circumstances is a Legislature permitted or required to seek the advice of electors through such mechanisms?

The distinction between these two terms is significant. Generally speaking, they are defined as follows: "plebiscite" being the public expression of a community's

opinion without binding force, "referendum" the process of referring a political question to the electorate for a direct decision by general vote.

What's wrong with our current parliamentary democracy? Central to this question is the age-old issue facing the electorate during general elections at the provincial or federal level: Is the casting of a ballot for a particular candidate a vote of confidence for that individual, or a mandate for that candidate's party to implement its platform as presented?

Party discipline, the need for party whips, the toe-the-party-line mentality and the relatively few free votes which occur would seem to support the argument that individual members of provincial legislatures or federal members of Parliament have little individual power or influence. This said, it is easy to appreciate the electorate's lack of confidence in the process itself. Election platforms become merely campaign rhetoric and the riding MPP becomes a lackey for his or her political party.

Furthermore, if the elector casts a ballot for a particular candidate on the basis of choosing that individual over his or her opponent, are we as a society expecting that council member or provincial MPP to be an automaton, indicating yea or nay as the polls dictate, under the belief that they are expressing our will? Or rather, are we as electors taking a snapshot, if you will, of a candidate, examining what he or she stands for, what his or her beliefs, values, goals and ideals are for the community, and empowering that individual to go forth and represent the community to the best of his or her abilities?

We are here today because Canadian voters en masse feel alienated from their elected officials, treated with an air of smugness and élitism evidenced by their governments and taken for granted when the government of the day deals with the public agenda. We, the voting public, are tired of being cynical, angered at having to be sceptical of every utterance made by the people we have voted for. It is ridiculous to put candidates through our political litmus tests and largely disregard their competence to lead or to govern. With direct democracy, the electorate could vote for representatives more for their abilities and be less concerned about political platform.

The role of special interest groups' influence would not be negated, but their positions would be publicly highlighted. Such groups in particular referendum issues would not be able to exert influence via the back door. Rather, they would be forced to champion their cause for the public at large to decide upon. To wit, if the matter of universal health care coverage versus a two-tier system were to be addressed by way of public Ontario-wide or national referendum, organizations such as the Ontario Medical Association would in all likelihood become a candidate of sorts, advancing their argument for or against the particular question.

1440

Governments which take the position that they know better show contempt for the public which has put them in significant positions of authority, ones which are viewed, unfortunately, with far less respect than ever before, both by those who hold the offices and by we who have placed people there.

We, the public, bear some responsibility for the current state of affairs. In exercising the authority we have placed in their hands, our elected representatives are proxy-holders for the shareholders of the corporation called Canada, called Ontario and called Markham, in our case. You must keep at the forefront of your minds that when you take some measure, when you voice a concern, when you strive for an objective, you are doing so on our behalf. Ultimately, then, government policy must be that which expresses the will of the people, either via the public's initiative at the first instance or, in a democracy, our representatives presenting their policy or position to the public for consideration.

There has been a tragic breakdown in the relationship between our elected officials and the citizenry. We, the citizens of this great province, have in many instances abrogated our responsibility to insist on an ongoing dialogue and consultation with our representatives. How often do you find all-candidates' meetings during election campaigns where only a handful of individuals bother to attend? What message does generally low voter turnout send to our representatives? A vicious circle of distrust, apathy, élitism, taking voters for granted and alienation exists, and we must break it or have it break us as a society headed into the next century.

Public policy should be decided by our elected representatives in concert with the public at large. To that end, direct democracy is an invaluable tool. Ultimately, our elected officials exist to manage and govern the corporation within the context of the policies we have set out. On a day-to-day basis, the Minister of Health obviously is most definitely in a far better position to deal with the events which impact on our health care system. The mayor of Markham is in a far better position to deal with ensuring the delivery of municipal services day to day. However, governments are not entities unto themselves, operating in vacuums. We, the people, should have the inherent right to democratically decide what policy best suits our needs and our wants.

To that end, we are not suggesting that the general public micromanage government on a day-to-day, issue-by-issue basis. Obviously this would frustrate the business of the corporation. What we are suggesting is far more fundamental. What we are referring to is the types of public policy issues which say who we are as a community. We're talking about those things which impact on our identity and what we stand for.

Should any public question be placed on the ballot as a referendum? No. Clearly there must be a mechanism which prevents frivolous issues from cluttering the public debate and costing us as taxpayers. There must be some gauge of the public's desire to either initiate measures or address legislation prior to placing the referendum question on the ballot. Using perhaps a percentage of actual voters in a previous election in a given jurisdiction as a yardstick would in all likelihood be a fair barometer.

Which questions become plebiscites and non-binding polls versus binding referendums? This is a complex issue in and of itself, and quite frankly it would be too easy to say that all matters subject to appropriate measures of the public's concern should be on the table. Quite frankly, I think it requires significant further examination.

Should we be permitted to recontest an already voted upon referendum? Again, no. This would obviously allow for gross abuse of the referendum process by well-financed interested parties or recklessness by governments. The province of Quebec, among quite a few others, for example, is restricted to holding one referendum on any one subject per mandate.

Referenda from other jurisdictions: A number of referenda of international significance which have either been held or recently suggested include the October 1995 referendum as the most recent of three referenda held respecting the province of Quebec's constitutional relationship to Canada. Earlier this year, the former Prime Minister of Israel, Shimon Peres, indicated the issue of Israeli return of the Golan Heights to Syria would be decided by referendum. As an aside, and significantly, here the local ratepayers, the Golan Residents Committee, were very sceptical of campaign promises made by former Prime Minister Peres and were unsuccessful in obtaining new special legislation prior to the recent elections which would have prevented the possibility of politicians misusing the referendum itself as a tool for winning elections while misleading the electorate in order to gain voter support. The government of Ireland has recently held a binding referendum, as required by existing law, to amend the Divorce Act. The Cambridge city council in Boston will place an anti-pornography question on the November 5 ballot, pursuant to an order of the Massachusetts Supreme Judicial Court.

Between June of this year and the November 5 United States general elections, over 300 referendums and/or initiatives will have been voted on and decided by the public at large in the United States. The variety of issues includes state constitutional amendments, such as term limits, flat tax legislation and juveniles 15 years and over to be tried as adults, existing state legislation, such as the legalization of marijuana, minimum wage, casino gambling and reform of public schools, and initiatives by state legislatures, including parole reform, school tax credits, medically assisted death and property tax measures. There are currently 24 states with initiative-referendum laws. As you'll note, the types and variety of issues is broad-ranging, including some of which are currently on the Canadian voters' minds.

If managed properly, direct democracy in our view empowers the general public by placing political responsibility in their hands. If viewed wisely by our elected representatives, direct democracy is a tool of positive enlightenment.

Representative democracy may not be replaced. However, governments and the public at large must recognize and respect the fact that our future as a society is based on a partnership of minds. To some extent, this is satisfied by the consultation process, such as these hearings. Last evening, in my role as president of the Bayview Glen Ratepayers' Group, I attended a Markham council public consultation meeting devoted to the subject of user-pay waste management. This type of forum goes a long way towards that meeting of minds. While the examples we've highlighted cover both the micro as well as the macro issues as ones which are currently being addressed by the referendum-initiative process, let's not

lose sight of the real issue. Let's talk to each other, let's understand each other better and let's be far, far better listeners.

Mr Silipo: Sir, in your presentation, you say clearly no to the question of should any public question be placed on the ballot as a referendum, and you talk about the need for there to be a mechanism to prevent frivolous issues. Is it your view that rather than setting out any parameters about what kinds of issues ought to be the subject of — I'm assuming you're talking here about citizen-initiated referenda — you would just do that by putting in place a number, by dealing with it through the numbers of people who would have to sign on to a particular initiative for it to go forward?

Mr Shore: Generally, yes.

Mr Silipo: Can I just get you to elaborate on that? Is that because you think that it would be difficult, impossible, to define the kinds of areas that should be subject to a referendum, whether citizen-initiated or government-initiated?

Mr Shore: In researching this whole issue, you find a combination of the very, very micro issues, everything from, in the United States, experiences of referenda on whether a municipality should be divided, creating a new municipality, the sale of crown lands or congressional lands. You find really everything from the absolute issues which affect a particular ward in a municipality here to the more fundamental issues which speak to who we are as a society à la universal health care, à la whether the death penalty should be reinstated. We are torn, I think, as a community over how involved you want to get, and that's where in my conclusion I say the real issue is that we communicate better.

1450

In answering your question directly, you definitely do need, as an absolute minimum, to have a formal number process that weeds out just randomly any issue. As a president of a ratepayers' association, my being able to go around and getting 100 signatures on a petition shouldn't be enough to decide whether Markham should be divided in two.

Quite frankly, I don't have an absolute answer. I think it does work in other jurisdictions, that with that numeric gauge in place, you have some form of micromanaging by the community where you are almost literally empowering 10 million people, but on the other hand, I think it's more significant to address the issues of identity and what defines us as people.

Mr Silipo: Maybe it's getting to your latter comments, what about the other side of it, in terms of when government would initiate a referendum. Again, what kind of parameters, if any, would you set or what kind of guidelines would you tell us we should set in terms of when government should or shouldn't use referendum?

Mr Shore: It's a lot more difficult to address that one, because you don't have the same — it's not as easy to put the same numeric or mathematical gauge in place. I don't have an answer for you. I would say still that the framework with which that should be looked upon is the same mindset as the previous answer.

I think it's far more important to talk about — and I don't mean to focus on one issue, but we're now address-

ing a health care crisis in Ontario. I think it's far more significant for both the public, in terms of initiatives that they might address, as well as the governments, to look at those types of issues, whether we're talking about — and this isn't being critical of the government of the day — health care, if we're talking about day care, if we are talking about child support payments.

It is those types of fundamental issues that I think the public really feels a sense of frustration that the government, any government, is just not listening and understanding what the public's mindset is. I don't think it's talking about the rules and regulations which come after the bill itself.

Mrs Munro: Thank you very much for this presentation. I find it really interesting because I think it speaks in a sort of more philosophic tone in terms of coming to grips with the issue, particularly when you write in your conclusion about the need to listen better and to open those lines of communication.

My question then comes from this whole issue of the accountability of people in terms of initiating discourse on an area that they want to bring to that public attention, and if you see some kinds of opportunity here for guidelines or you'd like to comment on the need to establish some sense of accountability in terms of those ideas that are being brought forward.

Mr Shore: I'm not sure I understand the question.

Mrs Munro: Perhaps I will go back to another area that has already been discussed and that's the area of education, of being able to have some kind of education for people, in terms of understanding what are the issues and how they might bring those to the public fore, in the way of referenda or any other mechanism for that matter. So behind that accountability, I guess, is the question of the education of the public and the information process.

Do you consider that it's handled well enough now? Are people sufficiently well informed to be able to head into this kind of activity or not?

Mr Shore: No, but along with that answer is the public's perception, and certainly with the briefing papers that you get on your desks, with the deluge of information I'm sure that you're faced with every day or that cabinet ministers are faced with every day, there is far more information about any one subject area that may be on your desk than will be on my desk, but while, no, the public isn't educated enough to adequately, on most issues, address them right now, the public is also frustrated at governments or politicians generally, be they the government of the day or oppositions, who have the view, almost a parental view, that they know better and the public is not invited into the process enough.

A case in point: At Markham town council last night, you had 250 people packed into a small room talking about user-pay waste management. There may not have been economists in the room, there may not have been engineers in the room who understood the issue from a technical point of view; there were smart people in the room, but what they were very frustrated at is that they were being thrown into a dialogue process without having received some background so that they could present an intelligent — not argument, an intelligent discourse.

What the people want, whether you're talking about issues that affect education or health care or social services, they want a better, ongoing dialogue. Certainly, they don't want to meet their MPP or their councillor for that matter. I haven't met my councillor in two years already. Part of that is my fault, because I could've given him a call and said, "I want to meet you." Part of it is his fault, because he's going to save his energy to come out and campaign to me until, I guess, somewhere around this time next year. The public at large — how often do you have town hall meetings? I'm not talking about to do any —

Mrs Munro: And how many people come to them?

Mr Shore: It's a vicious cycle. You're right, it's a vicious cycle and somewhere in there, it's got to be broken. I don't mean you, as the government, or elected officials have to break it, but there's got to be something in there somewhere that breaks it, and maybe that's going back to an answer to Mr Silipo that if there's a better consultation process all the way around, I think you address a lot of the rule-regulation type of micro-issues.

I don't think it eliminates the need for referendum or initiative on the larger issues, because quite frankly I don't think, no matter how much information is on your desk deciding to deal with the issue of two-tier health care — forget whether it is, and forget what information is on your desk, that's not an issue, in my mind, in the minds of the people that I speak to — I don't think that should be a decision of the government. It should be a decision by the people at large whether they want to have that option. It's clearly a fundamental issue which defines us, in that it's a national issue, as Canadians.

I'm quite willing, after my meeting last night — I'm glad that I'm involved in the consultation and the commentary process by Markham council, but I'm quite willing to leave how my garbage is picked up to Markham council.

Mr Stockwell: I guess mine's a little bit more direct. There was one little sentence in your brief that I found to be painfully true, "There has been a tragic breakdown in the relationship between our elected officials and its citizenry." That's about as true as it gets. I don't think anyone will disagree with that, and that crosses all party lines. You're not suggesting that referendums are going to fix that.

Mr Shore: No, not in and of itself, but I think that —

Mr Stockwell: Let me ask the next question then if no is the answer. As you go on then, it seems fairly clear to me that there's going to have to be a series of initiatives taken by a succession of governments to deal with this breakdown in trust, and it's fundamentally broken today. That's probably got a lot to do with apathy, with voter turnout, the fact that really it matters not who you send to Queen's Park, their position is the position held by the party, and as a person, you're citizen A, your input to the decision-making of that party is so negligible it's non-existent.

What is it that we're going to have to do as elected officials to create a situation where there's a belief in the process? Because the process, including this committee, is almost shamlike.

Mr Shore: Agreed, and I would agree with the comments you made to the previous presenter about empowering backbenchers. I don't have all the answers to how you do that exactly, and yes, I think that as is the case with establishing trust in any relationship, two individuals meeting, it occurs over a period of time. In a very abstract way it occurs — this isn't answering your question directly — by the individual elected official going out, sitting down, making sure that my councillor knows who I am — not through my efforts, but if I'm not going to do it, it doesn't abrogate him of the responsibility — or of having town hall meetings.

1500

The frustration is that even if you as an individual MPP in your riding of Etobicoke West sit down with people on a regular basis and fulfil your responsibilities, in your mind, as absolutely best you can, because of the way the system is right now, and even if you have done an absolutely excellent job in being a sponge for the information that your community imparts to you, you can't do very much. I don't mean you in particular as an individual, but you can't do very much.

Mr Stockwell: I understand what you're saying.

Mr Shore: I think what the concept of holding referenda or initiatives does do — this doesn't necessarily help you out as an individual MPP — is that if that process is being frustrated by "party politics" it enables, on given issues, the public to still be able to do something.

Mr Stockwell: Good answer. I agree with that.

Mr Bartolucci: Thank you very much, Mr Shore, for the reality check. As I was listening to you, you're right, absolutely: Politicians by and large don't do a very effective job of keeping in touch with their electorate before and during the electoral representation process. If there was one comment that was so apparent during the last election when I was campaigning, it was, "We only see you at election time and we don't see you during your mandate." So it was a reality check, and I thank you for that.

You're simply saying that referenda are not good enough. It's not going to promote Your Ontario, Your Choice because obviously you're not going to have that many opportunities to make that choice. Is that what you're saying?

Mr Shore: Not exactly. I think it goes to my answer to Mr Stockwell, which was that it's a mechanism that allows the public to do something about the frustration which exists today because of the way the system is, where even if you are doing an absolutely outstanding job in your riding, because of the system there are limits on what you can do. With a referendum-initiative process in place, whether we're talking about micro- or macro-issues, the more important parties to this process, over and above 130 of you, are the 10 million Ontarians, and they should not be deprived of advancing various issues, approving or rejecting legislation that's out there, because of the system. In concert with that is that, on a day-to-day basis you are the folks who both micro- and macro-manage this system or this government, this corporation called Ontario.

The answer to your question is, regardless of whether the government of Ontario adopts referendum or initiative legislation, a far more encompassing, ongoing consultation process, dialogue with the public, not just through formal hearings such as these down at Queen's Park in the Amethyst Room, has to exist. Your constituents, and it has absolutely nothing to do with electioneering or campaigning, have to know that you're out there listening to them and hearing them on an absolutely ongoing basis the month after an election just as much as the month before an election.

Mr Bartolucci: Thank you very much. I agree with you.

DAVID VALLANCE

The Chair: Our next presenter is Mr David Vallance. Please come forward. Welcome to the Legislative Assembly committee. We look forward to hearing what you have to say about referendums.

Mr David Vallance: I must say I really appreciate being here. I originally applied as representative for a group, an organization, and we met last week and couldn't come to any conclusion on the format, so I called and asked if I could do an individual presentation and here I am. I appreciate that. I'm just going to read my paper initially and then see what you think.

The discussion paper, referred to as the paper, contains some interesting remarks. Many people tell us they feel disfranchised by the process of modern government. Many don't believe government can work for them. The manner in which important public policy issues are decided often appears to be dominated by special interest groups that seem to enjoy preferred access to the media. I wondered why the media; I would think that access to the government would be more useful.

About a year ago the *Globe* published a letter from me in response to a feature article by Andrew Coyne, who was explaining why this current government had a mandate to govern even though it only had 46% of the popular vote. My letter said that Mr Coyne's article was largely a waste of time and space because "in Canada we no longer elect governments, we throw them out. We'll find out in four or five years whether or not the Tories have a mandate." Brian, David and Bob all got thrown out of office because they didn't fulfil their mandate, which was to govern for as many of the people as possible, not to be dominated by special interest groups. Two of the three also made the mistake of being perceived to be governing by decree and getting too heavily into pork-barrelling.

This government cannot generally be accused of catering to special interest groups or pork-barrelling, but it is becoming guilty of governing by decree and fiat. Bill 26 is an example, although the government did listen to a fairly widespread protest and made some changes.

Some in the government are arguing that they are taking the hard decisions and, unlike previous governments, that is more important than making so sure the right decision is made to the point of indecision. To the extent that the issue is one that had full exposure in the

campaign or is a result of considerable public consultation prior to the act, I certainly agree that the government has the right to make the decision. Provided it makes the right choice more often than not, it will have a good chance of renewing its mandate. If, however, it ignores public opinion too often, we will again try someone else. Public opinion, although hard to define, is not a special interest group.

Representative democracy developed because direct democracy became too cumbersome and expensive as the right to vote was acquired by more people. If members of the government could understand that although elected collectively by 46% of the voters, once elected the government is to represent all constituents, these meetings would not be necessary.

My sense, from a discussion two weeks ago with a group of involved citizens, the one that I was referring to, was that they were not terribly interested in referenda. It would probably not be true to say that they are entirely happy with the way the business of government is being conducted. My own opinion is that referenda should be used as a last resort to bring a government to its senses. On the issue of property tax reform, I felt that most at that meeting would agree that a referendum would be useful. Almost everyone there agreed that a change is needed for property taxes, but what is being proposed is unacceptable. Several indicated that a referendum on this issue would be useful. That would be one of three areas — constitutional amendments, gambling and new taxes — mentioned in the paper that Mr Harris considers so fundamental that they should be decided using referenda.

It may be argued that property tax is not a new tax, but there is sufficient evidence that what is being proposed is such a change from current practice that the public should be consulted. In most communities that have suffered a recent property tax reassessment, the reaction has been so negative and widespread that it is obvious that what is happening is unacceptable to a large portion of the population. The minister has said there will be as many winners as there are losers. The problem is that because the proposed assessment requires regular updates, the winners and losers are in a constant state of flux. The anger generated with each change will be remembered at the next election. A referendum could hand the issue to the people.

I asked Colin Powell, during his recent visit to Toronto, if his decision not to be a candidate for the US presidency would have been different if the US President had the nearly dictatorial powers of a Canadian Prime Minister or provincial Premier. The discussion paper refers to that situation as the "obligation to oversee the executive branch." We don't have the controls the US does, as an aside.

That obligation is poorly fulfilled by the members because of party discipline. The belief that "most problems could be solved if decisions could be brought back to the people at the grass roots" would be less true if MPs and MPPs could fulfil their role to act "as trustees of the nation or the province as a whole, not just as a voice for a particular constituency." The need for referenda could be greatly reduced.

In my opinion the last four provincial governments lost sight of both these important obligations of all elected members. The current government's mandate is partly the result of its platform, but more the result of the poor performance of the previous government. If it screws up too often it will also be toast at the next election. That would be too bad, because the platform is sufficiently different that it has the opportunity to make significant change in Ontario.

1510

One last point before I deal with thoughts on referenda: The fiasco with Bill 26 and the impending disaster with the assessment proposals are in no small way the result of too much reliance on the civil service. We are fortunate to have generally honest, dedicated and professional civil servants, but they are no less interested in maintaining their careers and jobs than anyone else. Not all problems with the legislation can be blamed on elected people except to the extent that signals from the public are ignored in favour of the largest special interest group of all: the civil service. There is need for more hands-on management of policy. One of the main points in your platform was the reduction of bureaucracy and creating more efficiency in government. If that process is left to the bureaucracy, it isn't hard to foresee the result.

The question: Let's assume that a referendum had been held to decide if Canada should have a national pension plan. If the question asked had been, "Should the government develop a pension plan for the benefit of all Canadians?" would the result have been different if the question had been asked, "Should the government develop a pension plan primarily for the benefit of better-off, elderly Canadians to be paid for by younger employed Canadians of all income levels?"

Legitimacy: In 1994 the city of Toronto put a question on the ballot about the status of the Metro level of government. Regardless of the result, Toronto had no possibility of doing anything about it. Are the time, effort and money used for that exercise a legitimate use of public funds? The Charlottetown accord referendum is cited as a good example of how effective a referendum can be. It may have been effective, but is the result satisfactory? I voted with the majority in the Charlottetown accord. Did that end it all? Are we further ahead because of the vote? Should not the politicians, who are the only ones really interested in that debate, have held their noses and lived with the result?

Cost: The paper suggests that most referenda would be held in conjunction with another election. Municipal elections are held most frequently and could be used to save money. That's true, but will a major issue be mistaken as a local one? Someone suggested that funding for the Sheppard subway should be voted on by Metro voters in a referendum. If the province is paying 50% or more of the cost, does that not make it an issue for a province-wide referendum, or is it a referendum issue at all?

Safeguards and legal issues: I know other people are better qualified than I am to have discussed the safeguards and legal issues necessary for suitable referenda. One other submission I read noted that power, once given, is difficult to take away. If I were in your position, that would be of prime importance.

You may have concluded at this point that I'm not personally a fan of referenda. However, the process of modern government has made me increasingly so cynical and so disenchanted with governments that I haven't voted for a party in the last 15 years. I have only voted against the existing government, party or candidate.

That's a sad thing, and I can see that referenda could provide an outlet for my frustration. These hearings are another outlet, and I suspect that if you listen carefully you may get a sense of public opinion on many issues other than referenda. I guess somebody spoke to that already.

Mr Stockwell: That was very interesting; I enjoyed that. I'd like to ask what may be a little, small point: the gambling stuff as far as referendums are concerned. I have a great interest in this referendum from a gambling point of view. My question is, would video lottery terminals be something that you think we could go to a referendum on? Would that be a useful function?

Mr Vallance: I must tell you that the gambling issue is not a big one for me, although I'm generally not a gambler and not really a fan of it. I don't have problems with people who gamble, but there are problems with gambling. Having said all that, no, VLTs are not a suitable referendum issue. If they're subject to proper legal controls and they're widely dispersed, that's not the same type of issue as imposing a large casino-type gambling establishment on a community or an area.

Mr Stockwell: The question then becomes, who makes these decisions as far as what is acceptable, what isn't acceptable, what should be gone? We've heard a lot of stuff, that you get 10% of eligible voters who are left-handed and have blond hair — there are all these criteria they set down. It seems to me that at the end of the day it would make it a lot easier if we could just lay out what you've got to go to the public on: Is it gambling or is it taxes or is it a tax hike? Is it moral issues, as they say? What is the line? Where is it?

Mr Vallance: I guess that's really the crux of the whole question, isn't it? My own view, and that's all I can express, is that there are really very few issues that should go to referenda. The public in its wisdom, or lack of it, elects you people collectively to conduct the business of the province for a period of time. As I said before, if you do that well, you can get a second chance, a second go-round, another round. If you screw up as the last few governments have done, you'll get one term.

I perceive that as your problem. If you have the sensitivity to deal with "public opinion" — what's public opinion? — and the previous speaker had some trouble trying to figure out how to get that too, the issue will be resolved in a suitable manner. If you can't capture that on enough issues, then you'll never succeed. It's not just one issue; one issue's not going to defeat the government.

Mr Stockwell: Generally, it doesn't.

Mr Vallance: One may, but it's not going to —

Mr Stockwell: Sometimes the GST comes along. Okay. The last point I'm trying to get is that it seems, reading between the lines, that you sense there's frustration out there because government is not receptive to the citizens. I get the impression you feel that about your typical MPP, that there's not a lot of input, not a lot of

power exercised at the local level because they don't have access. Am I misreading that?

Mr Vallance: Mr Stockwell, most of my experience has been with municipal government and I'm terribly frustrated at that level. As you go up, you get more and more removed as an MP or an MPP from the actual doings of government. It's an executive government in Canada, as you know, and I guess the frustration comes with an executive that can lose sight. I think frankly you're the public opinion; the MPPs, the members of the House are the public opinion you should be looking at. I'm not so sure the executive is paying enough attention to what's being said there.

I'm an inveterate letter writer. I write Mr Harris and all the other ministers on occasion when I see something of interest to me. My frustration comes when I get a form letter 6 back. I don't want a form letter 6. I want a response or I don't want anything. If you don't respond, that's fine, that's okay, but don't send me a form letter 6.

Mr Stockwell: I agree with you too. I get them as well.

Mr Vallance: I don't care if I don't get a response. I got my two cents worth in and that's all I need.

Mr Stockwell: Thanks.

Mr Boushy: I'll tell you one instance where a referendum was useful in my own riding. About 1966, fluoridation became an issue and the city council at that time, of which I was a member, took it to the people for a vote and it was voted in by a majority. It was a very sensitive issue. Since then almost every year some group comes up and says, "You've got to take the fluoride out of the water because it's killing cows someplace in India or here and there." They show you slides on that stuff. The council stood by the decision and said: "The people voted for it. If you want us to reverse the decision, we have to go back to the people." All that time it has proven very successful and the majority of the council members said, "No, I don't think we should go back to the people because the people at that time supported it and I don't think there's any change."

My question to you is, don't you think the referendum at that stage was a good one and stick to it rather than the council changing its mind: One year, "Yes, we should have fluoride." Next year, "No, we shouldn't."

Mr Vallance: Fluoride's probably a good referendum issue because it's very local and you can get a large debate on the subject. A large part of the population is likely to vote on it. As the issue gets bigger, I think it becomes more difficult.

Interestingly, my own two children are in their 20s now and one has no cavities and one has four cavities and I've got a mouthful of fillings, so I wouldn't have a hard time deciding which way to vote on fluoride. To me, it's not the same issue as Mr Stockwell's gambling issue or a tax issue. I think there are local issues that can be decided by referenda, but that's maybe not what you're talking about.

Mr Boushy: What I'm trying to say is that sometimes a referendum is very useful, as in this case, because if it wasn't a referendum, if it wasn't voted by the people, the council of the day in other years could have changed its mind and put fluoride in again, took it out and put it in.

It seems that the people voted for it, and it was very useful. The point I'm trying to make is that for a referendum, at certain times you're going to say the issues are very useful, and you disagree with that.

Mr Vallance: It gives you, as an elected person, something to fall back on. If you're talking about referenda, from my understanding of the paper you put out and in talking to other people, there are two sides to it. One's a government-initiated one and then one's a population-initiated one. If there's no provision for a population-initiated one, then is a referendum a suitable forum for deciding an issue? I have no doubt which way I'd vote on fluoride, but that's a local issue. I'm not sure that councillors should have the right to forbid it forever once it's been passed if the referendum decided it in the first place. I guess there has to be an opportunity for a large enough group.

1520

I would suggest, without having done a lot of thinking about the subject, that the more localized the issue, the larger the number of people required to force a referendum — this is a population-initiated one. A citizen-initiated referendum would require a fairly large percentage of the eligible voters before you could put a ballot to it, from the government side, and that's a different issue. But there should be a mechanism in place, as far as I'm concerned. If you can have a referendum at one time, you shouldn't be able to say, "No, we're never going to have one again." I don't think that's right either.

Mr Bartolucci: Thank you, Mr Vallance, for your presentation. You touched on a point that not too many presenters have touched on and I think it's an extremely important one and that's the question. If in fact we're going to be using a referendum, then the question is all-important and the structure of the question will determine whether or not the referendum is worthwhile, and you alluded to that. How can we ensure that question is the proper question and who should do that? Your idea, please. That's all I'm asking for.

Mr Vallance: How can I ensure I'll go to heaven and who decides?

Mr Bartolucci: Yes, that's right.

Mr Vallance: I'm serious. I read about Quebec's format to use a citizen body to develop the question, but the question in the last referendum in Quebec, to me, was so badly misunderstood, according to a number of people I talked to, with relatives and friends in Quebec — who's to say the right question? That's part of my problem with referendums. I think referendums are fine but the problem is, who controls the question and so on? On my question about the Canada pension plan, I was quite serious about that. I just made a presentation on that. I'm very frustrated about what the government's doing because it's not a benefit for all Canadians. It's for the wrong people; let's put it that way. There's no way you can open that debate again.

Mr Bartolucci: I agree with you wholeheartedly that the question is all-important if you're going to use it. I'm just wondering, because I don't have the answer to it, who should be charged with that responsibility to formulate that question?

Mr Vallance: If you want to give it to me, I'll try and be fair. Who knows? There's no answer. There's no right answer. I guess you should have a vote on the question.

Mr Bartolucci: A referendum for the referendum.

Mr Vallance: A referendum on the question for the referendum.

Mr Bartolucci: It's never-ending. But it is a very important question that has to be answered.

Mr Vallance: Exactly. I would suggest on a government-initiated one or a Legislature-initiated one that the question should be formulated by a group such as yourselves, where an all-party group decides on the question. That presents a reasonable amount of fairness. On a citizen-initiated one, I don't know how you control it except that you have to take it away from the group initiating it.

Mr Silipo: Mr Vallance, you're absolutely right that in these hearings, and I think it's happened probably more today than in the other days, just by the way in which the last couple of presentations have focused on this, we in fact have heard, as you said in your conclusion, a number of other related issues rather than just referenda. I think that's quite appropriate because I'm assuming what the whole issue around referenda is intended to do is to deal effectively with the question of how to make our process more democratic, and obviously referendum may be one vehicle but it's not the only vehicle, and the other is the one that we've been discussing, certainly that Mr Stockwell touched on, in terms of how we make the existing system work more democratically.

There's been and I hope there will continue to be some more discussion around how we make Parliament itself work more effectively. You talked in your presentation about the kind of very centralized, almost autocratic, I think dictatorial, powers of a Canadian Prime Minister or provincial Premier, which I would have to say is a fair description of the system we have. My sense is that part of the solution to that has to be to provide greater powers and latitude to individual members, both in government and in opposition.

The other part, because of our system, I would argue has to come about by changing one of the basic ways in which we go about electing our MPPs. I've been one who has been advocating for some time now the use of either straight-out proportional representation or some mixed form of proportional representation as a way to do that, because it seems to me that would more precisely reflect the wishes of the voters and would result probably more often than not in minority governments, which I will argue are more democratic in the long run in terms of how policy is made and decisions are made for the benefit of the people of the province. I'd be interested very much in your thoughts on that.

Mr Vallance: I'm not so sure we'd get better government just because of proportional representation electoral processes. Look at France and Germany. The coalitions come about and it often becomes a tradeoff and I'm not sure that's the best way to operate. We had minority governments a number of times through the 1970s and there was certainly some good legislation passed at that time, but as far as I'm concerned, there was also some abominable legislation that was passed. So I'm not sure that process would work any better.

There's a concern often expressed that the population doesn't vote in large enough numbers and that there should be more participation by people. I'm also not sure that's important. We spend a lot of time, and there's just been a law passed by the feds that says you cannot publish poll results in the last three days before an election. That's of small importance to me, although I think polls are very useful and very representative of the population. A lot of polls have predicted election results very closely, and to me if you get the most interested portion of the population out to vote, even if it's only 50% or 40%, you're probably getting a better election than getting 90% of the population out to vote just because they have to put an X on the ballot.

I'd rather see a 40% vote that is knowledgeable and informed and has looked at the issues. They will represent the rest of the population I think fairly equally. It's a very large sample, to do go back to polling, and a very large sample gives you a pretty accurate result, in my opinion. As far as proportional representation is concerned, I'm not a fan of that. The first past the post has worked for us well as far as the governments are concerned and it gives the chance to have big shifts which are often —

Mr Silipo: I'm not going to dissuade you from your view, and I'm not trying to do that, but it seems to me that part of the argument in your paper is that the present system hasn't worked. You're the one who makes the argument that you yourself have voted more against governments than in favour of any parties coming —

Mr Vallance: Yes, but we've had three different parties in succession in the last three elections, and we can go back prior to that and exclude this government. We've fairly long periods — four years for the NDP and so on. During those four years, they didn't demonstrate the capability to perform effectively and that's what I was talking about, that they lost sight of their mandate, which was to represent or to provide legislation that works for everybody or for as many people as possible within the legislation. The NDP government, as far as I'm concerned, spent too much time on esoteric things rather than getting down to the issues.

The Peterson government had its problems and the Conservative government that lost before Peterson had its problems. They were specific and if you go back, I think I could identify them. It relates to what the previous speaker was talking about. I don't agree that you can do those in town meetings because I've been to many town meetings and that's not particularly effective. But as I said in my paper, listening to people who come in and talk to you, they are the most interested. You have to sort out us nuts from the rest of them. It's a matter of listening very carefully between the lines as well.

The Chair: Thank you once again, Mr Vallance, for your presentation. We appreciate it.

1530

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: Our next presentation is going to be from the Canadian Civil Liberties Association, represented by Alan Borovoy and Steven McCammon. Would you please

come forward and identify yourselves for the purposes of Hansard.

Mr Alan Borovoy: Thank you very much, Mr Chairman. I am Alan Borovoy the elder, and this is Steven McCammon with me. Just a preliminary point to begin with: To whatever extent the object of this exercise is to encourage greater public participation, it would help considerably if we members of the public were given a little more notice of these hearings than we got in this case. We weren't told about this until — and I'm sure this is not unique to us — some time towards the end of the week before last. There was little opportunity for us to consult with our own board members, let alone do the kind of research we normally like to do for these things. That, of course, was the experience we had with Bill 26 as well.

The very first recommendation I would make is a procedural one and that is that there be no legislation introduced into the House based on this exercise until and unless there was at least one more round of public hearings where there was more ample notice. That's the first recommendation — a procedural one.

Now, to address the substantive issues, partly they're influenced by the constraints we've been operating under. As a result, my presentation will be addressed to general principles rather than specific details. There may well be some permissible exceptions to what we are about to say, but our position should be taken as a general admonition.

As an organization whose very essence deals with improving the democratic processes, the Canadian Civil Liberties Association believes it would be a serious mistake to use the referendum as a significant device for making law and government policy. In our view, that would be a mistake. Although the referendum attempt is designed to vindicate one component of the democratic process — majority rule — it imperils another component of the democratic process — minority rights. The difficulty is that when questions are boiled down to yes or no, it discourages the tradeoffs and the compromises which enable minorities to exert some influence on the social consensus. By promoting no-compromise, winner-take-all solutions, the referendum can encourage, and in other places has encouraged, majorities to take some unfair advantage and often winds up abusing minorities.

Just a few examples: In about a 20-year period, of 10 referenda, 10 initiatives, approved by the voters in California, six were struck down as violations of the Constitution; the US Supreme Court struck them down. One of the most notorious of the initiatives approved by the voters in California was Proposition 13, which effectively said that incumbent land owners would have caps imposed on their property taxes. The result of that same referendum wound up making other land owners, new land owners, pay disproportionate amounts of taxes, an obviously unfair situation.

The state of Colorado a few years ago adopted an initiative, a constitutional amendment barring the state Legislature from prohibiting discrimination against gays and lesbians — flat out, you can't do it ever — by constitutional amendment. Fortunately, that too was struck down by the US Supreme Court. That's an example of what happens when you boil down some of these cases to an oversimplified yea or nay.

In Arkansas and Michigan, you had initiatives deny funding to poor women seeking abortion. It's one thing to oppose abortion in principle, but it's another thing entirely — I should say they impose severe limits on poor people — to restrict it to people who have money. That's the kind of thing that has often happened when you boil down questions in this way.

With representative government wherein the people who govern us are elected by our votes, there is far less risk of this kind of damage to minority interests when you have representative democracy as opposed to plebiscitary democracy. The more aggrieved people in our society are, the more likely they are to translate their complaints into votes at election time. As they get more aggrieved, you know those people are going to vote that way in order to vindicate those grievances. The votes of other people are less predictable and often dispersed. This gives politicians an incentive to reach some kind of accommodation with those minorities, some compromise, and that whole exercise serves as a deterrent to abusing minority groups. It's some protection they can get out of that kind of system.

But let me even say a word about how well referenda really can be used as a barometer of the majority will. In our view, that too is not a very reliable device. Why? Because the positions of most people on most issues are qualified. We live in a complex society. Most of us, what we really say about the greatest number of issues facing us is, "Yes, if this and this happens," or "No, unless this and this happens." That's what we do. When you try to boil it all down to a simplified yes or no, you often wind up with a misleading picture of what people really want.

Again, an interesting example of this is a recent one in California: An initiative was approved which said, "Notwithstanding any other law" — key words — "people convicted of three felonies will automatically get a lengthened prison term." Contrary to the wishes, to the obvious intentions of those who were promoting this initiative, this appeared to deny capital punishment to murderers who had two previous felony convictions. This has become the subject of litigation in that state. It's a mess, and partly because the referendum result did not effectively reflect the majority will, even of those who were promoting it.

In the state of Arizona recently the voters approved one initiative abolishing the office of the state auditor and approved another initiative extending the terms of office of all their state officials, including the state auditor. Those are the kinds of results one gets, and you can even see it on the same ballot.

When governments have attempted to provide adequate explanations for some of these complex difficulties, the results are often staggeringly complex. A law professor described his experience in California. He moved to California and received a 150-page document explaining all these initiatives; he thought it was the telephone directory.

1540

The other thing about it is that there are surveys that have been done where people say flatly how few of them felt they knew enough about any of these particular complex questions to cast a wise vote. There was a recent

poll in which only 15% felt that they could vote competently on these issues.

There is one more reason why, in our judgement, the referendum is the wrong way for a sensible democratic society to go, and that is that anyone who has lived in the real world for longer than an hour knows that the popular thing to do is not always the right thing to do; in fact, it is often the wrong thing to do. Indeed, it's the reason why we so often admire those politicians who have had the courage to do what they believed was right even as they knew it was unpopular. Of course, the democratic safeguard in all this is that ultimately those politicians can be turfed out, but the genius of representative democracy is that in the meantime it enables those politicians to act courageously if they will and attempt to lead their public.

Aren't we grateful today that Franklin Delano Roosevelt had this kind of courage, that prior to America coming into the Second World War he promoted aid to beleaguered Britain when Britain was the only free nation able to withstand Nazi aggression? Roosevelt promoted that aid. We know very well that if there had been a referendum he might well have lost on that issue, but the genius of the system is that it gave its leaders an opportunity to lead. Ultimately, the public could judge whether it was happy with that leadership.

In this way, representative democracy strikes a sensible balance between popularity and responsibility. The referendum doesn't even attempt a balance; popularity always prevails, even if it produces irresponsibility.

On the basis of all these considerations — the inadequate attention, the inadequate accounting of minority interests; the distorting of majority wishes; and the need for responsibility — the Canadian Civil Liberties Association urges this committee to disapprove of the thrust of the government document. All of which is, as always, respectfully submitted.

The Chair: Thank you for your presentation. I assume you're prepared to answer some questions and engage in dialogue with the members?

Mr Borovoy: If I may say so, I'm even eager to do so.

The Chair: I thought you might be.

Mr Bartolucci: Thank you very much for your presentation. So you're saying that there is no time when a referendum should ever be held?

Mr Borovoy: I hope I was too careful to say that. What I said was that I was not addressing specific details, the possibility that there might be some permissible exceptions. I'm talking in general terms. I say, as a general proposition, don't make this a significant device for lawmaking, whatever argument there may be some time for an exception.

Mr Bartolucci: I agree with that certainly, but maybe can we become just a little more focused? The government has indicated its intention to bring in this referenda legislation. They have a majority, so it's their indication they're going to do it. What issues should they narrow that legislation to, in your estimation?

Mr Borovoy: This is the reason I requested, and now I would implore, this committee to schedule subsequent hearings so that we have an opportunity to address some

of those questions. I don't come here with instructions from my board. There hasn't been ample opportunity to consult them. I would like very much to be able to respond to questions like that, because there again, this is a good example. If you just put the question, "Yes or no?" I'd have to say no — that's the problem with referenda — but if I could address some of those specifics I might say, "There's an argument for it here but not there." Please give us an opportunity to do that, and I would like to respond to those questions.

Mr Bartolucci: I think you're not the only one to suggest that they've had little notice, and I'm sure some member of the government will address that. Maybe you will have the opportunity to present again, and maybe at that time we would focus in on the issues and maybe the type of wording and who should do the wording and the geographical restrictions, threshold levels etc. There is much to talk about in subsequent meetings.

Mr Silipo: Mr Borovoy, thank you very much for your presentation. We are, by a decision that we've made in this committee, I hope going to continue to hear, because I'm assuming from what you've said and what a couple of other groups have said that there is continuing interest in this issue and that we need to do some more thinking and discussing before we get to the point of rolling along with legislation. I hope the government members will agree with that approach as we get to the end of today and of this set of hearings.

I want to pursue also this notion, and I appreciate very much what you've said, that you haven't turned your mind beyond the broad issue of when, if indeed ever, there should be the use of referenda, and you've left open the possibility. Perhaps I could just probe a little bit on that, because I understand very much the argument you're making and I think I would generally be in agreement with the notion that referenda should be used sparingly. I wonder, in a couple of specific examples that have been put before us and that we've lived through as citizens, whether you have any comments either personally or reflecting your organization. Was the Charlottetown accord, in your view, an appropriate use of a referendum?

Mr Borovoy: I'm not sure. I have some considerable doubt about amending constitutions by referendum. As a general proposition I have considerable doubt about it. How far I could justify an exception there, I'd have to think back through the history of it more carefully than I now have an opportunity to do, but let me just say as a general proposition, while it's important to make constitutions harder to amend than ordinary statutes, we ought not to make it too difficult. The world changes; conditions in the country change. We should not put ourselves in the position of having referenda as an ongoing device for constitutional amendment. While there might be an argument under some extreme circumstances, as a general proposition I would say no.

Mr Silipo: Is it fair to say that one possible approach to this might be for there not to be hard and fast rules about when referenda should be used and leave that as part of the exercise of that leadership you were talking about, and on the other hand proceed to set some rules around how a referendum would be held, in other words, the nuts-and-bolts rules that would govern a referendum

if and when there was a decision made as to how that should be used?

Mr Borovoy: If I follow your question, and I'm just going to restate it to make sure I understand it, you suggest that rather than provide some kind of machinery in an elaborate statute today, we might continue to muddle through as we have been for all these years, and if we come upon a situation where there is a special argument for a referendum, jump off that bridge when we come to it.

1550

Mr Silipo: Either that, or I guess I was going a little bit beyond and suggesting that there's been some discussion about at least looking at establishing some rules that might govern in the event that there was a referendum to be held; for example, all the nuts and bolts around, "Do we establish a Yes/No committee? Do we establish spending limits?" etc, all those things that would have to at least be dealt with in some way in terms of how you would run the machinery of a referendum.

Mr Borovoy: Of course you are catching me notoriously unprepared, as I warned you I was, on these questions. Just off the top of my head I would lean against what you're suggesting. I'm persuadable but I would lean against it on the basis that to invest a lot of energy in referendum rules today would, I think, create a situation in which there would be a greater temptation than otherwise to use it. Because in our view it is as a matter of course the thing not to do, I would rather not go through this exercise which might create a temptation that in my view is essentially a dubious, wrong temptation.

Mr Silipo: I just hope, Mr Borovoy, that your organization and you personally continue to not just give some thought to this whole issue but provide us as a committee with your views, because I think they would be very valuable, because certainly the government has indicated, as has been mentioned, its interest to proceed with some form of legislation on this. In that sense your warning to us is sound and I hope it is heard in terms of us not proceeding too quickly without giving some serious thought to a lot of major issues that have been flagged as a result of even these three or four days of discussion.

Mr Hastings: Thank you very much for appearing, Mr Borovoy, on such short notice and giving us a very illuminating dissertation. This first round of hearings regarding the referenda consultation paper is only chapter 1 in the saga. We have made some limited attempts through teledemocracy, videoconferencing etc with other parts of Canada and Ontario to get views on this issue of direct democracy.

I would like to hear what your response would be to Mr Tuck, who was here from the Hastings County Ratepayers Association this morning, if we could watch you two engage in a dialogue as to what he characterizes as the existing system of parliamentary democracy. To use some of his terms, and I don't think I'm taking them out of context, he said both orally and in his written submission that today's democratic institutions, particularly in Ontario, in his estimation are actually anti-democratic or undemocratic, unrepresentative, unresponsive

institutions, particularly from a taxation viewpoint, but that wasn't the only one. He also cited unjustified government land expropriation and the way in which the élites rule this province.

He would point out that the antidote, what he sees as a beginning to change that, was to introduce some forms of direct democracy. Otherwise, he says, people are really pretty well disfranchised. He cited particularly market value assessment in his county, in which a deputy reeve of a township voted in favour, quietly. The citizens' group did their research to find out, according to his version of the story, that the particular gentleman benefited in his business by approximately \$15,000 in reduced taxes. He cited that as just one example.

I would like to know from you how you would engage him and respond. If direct democracy isn't the case to be made, how do you then reinvent parliamentary democracies so that they do become as the original view: representative, democratic and responsive?

Mr Stockwell: In five or 10 words.

Mr Hastings: Three, actually.

Mr Borovoy: How did I know you were going to say that? I don't think one has to choose between accepting the status quo and going the way of referenda. There's, to be sure, lots to criticize in our society, and you may know that our organization usually appears here in the role of critic, not in the role of defender of the status quo. There are lots of things to criticize, but that doesn't make the referendum an improvement, and that's really the issue on the table before us: whether the referendum is going to improve upon whatever unresponsiveness there may be in the system.

Mr Hastings: What do you suggest, then, are three examples or ways of making things more responsive?

Mr Borovoy: I'm not sure how instantly creative I can be for these purposes, but for openers I might think of real hearings. That's not to denigrate this, but I mean hearings in which members of the public are given a fair amount of notice, lots of notice, where there are even some resources available to them to assist in research or whatever so that they can do a better job of trying to influence. I'm not talking about reams of money, because to be sure, referenda are going to be very costly also. If we were talking about money, that kind of thing would probably improve the process, make members of the Legislature much more engaged with members of the public and have much better discussions as a result. That's for openers. I'm sure there are others.

Mr Stockwell: Mine is more of a comment and a statement, maybe, than a question.

Mr Borovoy: I hope it invites a response.

Mr Hastings: Five words.

Mr Stockwell: Knowing you as I've seen in your public image, I'm sure it will elicit a response, as a matter of fact. I'm not a big fan of referendums, personally. I've seen the American experience first hand, and what they've done to their education system is absolutely pathetic; it's a sad commentary on how badly the referendum system can and will work. I don't think what this committee is doing today is anything but a byproduct of the frustration of the constituent, the frustration of the

people of this country in believing that they have a say in how their government operates.

I firmly believe we will address this issue, and hopefully satisfy some concerns by some people. I don't think anyone in this room would believe for a minute that by passing any piece of legislation that allows for a referendum we will have a satisfied, empowered populace; I don't think anyone believes it.

You come forward and make some very compelling arguments as to the downsides to referendums. But as I listen to my friend the member for Etobicoke-Rexdale, there is this conundrum that we find ourselves in, that we have the disaffected, which are the constituents, and the marginalized, which are your backbench MPPs, butting their head against the powers, and the power becomes more central, administration after administration. I blame not a party; I don't think the NDP nor Liberals were any different from us when they ran the train.

The direct question to you and statement, maybe follow-up is: When you go away to think about this and you discuss it with your board, you will come up with the same conclusion, that you don't favour the approach of referendums. What we need is not necessarily a knee-jerk piece of legislation giving a referendum power to the people; what we need are some answers on how we can go back if it's possible. You know what? The status quo never is acceptable, in my opinion, in a lot of ways. But it seems to me that going back to the way it was when people felt empowered, felt that they had some kind of commitment, some kind of input to the decision-making of this place, that's the reason we're here today, because the people don't believe they get input into their own government.

1600

Next time you come back, and I hope we do have a committee that allows you to come back, rather than spend time talking about just referendums, I would much prefer to talk about how are we going to create a system that once again gives the public enough opportunity for input that lets them believe that the government is a government of the people.

Mr Borovy: You know, in our earlier years we spent considerable time ourselves working with disadvantaged people, particularly native people at one point, helping them create their own organizations and helping them acquire a lot of the tactics that are necessary to pressure the politicians, which of course is what it's all about.

I think people feel empowered to the extent that they are more or less successful in exerting non-violent, lawful, democratic pressures on their representatives. Were you to arrange hearings challenging our creativity in this respect, I would be happy to respond. Of course, you appreciate — and I can tell by your remarks you appreciate — that we were prepared in a limited way to address what was on the agenda. I learned a long time ago that the very least I have to do is speak to what's on the agenda.

But thereafter, if there is some will to go further, we would be happy to look at it. What I fear with this initiative, as happens so often, is there is a desire for a quick fix, something that's going to satisfy people quickly. This won't do that and it will do a lot of harm on top of that.

The Chair: Thank you very much for your presentation. We appreciate your advice.

AGREE INC

The Chair: Our next presentation is going to be by Rick Weiler. I ask you to come forward, Mr Weiler. Welcome to the Legislative Assembly committee.

Mr Rick Weiler: Thank you for making the time available this afternoon for me to make this presentation. I believe the clerk has distributed to the members the folder I brought along.

Just by way of a short self-introduction, my background is in the practice of law for about 15 years. For the last five years, I've been involved in the field of conflict resolution and conflict management and I am presently a partner of a firm called Agree Dispute Resolution which is involved in a broad range of conflict management activities. In addition to that, I am an honoured fellow of the Canadian Institute for Conflict Resolution and I lecture at the University of Toronto in advanced mediation and at Osgoode Hall Law School on conflict systems design.

When I saw the notices with respect to the consultation paper on referendum, I thought it might be appropriate for me to make a short presentation. I hope I can bring to this a perspective you may not have heard before, and if I'm covering ground that's already been covered, Mr Chairman, you can give me the time-out sign. I appreciate it's late in the afternoon and with this kind of a presentation I always like to look around for the MEGO effect, "my eyes glaze over."

I don't want to make this too theoretical, but the message I am bringing this afternoon is, I hope, a simple and straightforward one. The message is that there is a full range of processes available to governments interested in resolving societal differences at a lower cost and making better policy decisions.

I believe government has a duty to fully understand these processes and how they should be sequenced in the public interest. Referendums, by their nature, are power-based and adversarial approaches to resolving differences. They should be available to government, I believe, but should only be used as a last resort. That's the message I bring and what I'd like to do is just very briefly make some observations and comments in support of that message.

I'm inviting the committee to consider sort of reframing what political activity and governance is all about. I am asking you to consider that really the business you're in is the business of conflict resolution.

By the way, what I've brought here is three or four pages consisting of the type of overheads I would ordinarily use in this kind of a presentation, but I'll forgo the overheads this afternoon.

I'm inviting you to consider conflict, and the definition you see there, that conflict may be defined as a form of competitive behaviour, a competition between actual or perceived incompatible goals or limited resources. To some extent, what government is about is the question of who gets what, when. That obviously leads to conflict. Conflict is. It's a state of the world, it's not going to go

away and so the question then is, how do we respond to that conflict? How do we choose to see that conflict?

I think in this regard we can learn something from the Chinese, just to remind ourselves that the Chinese word for conflict is made up of two characters, the one for risk and the other for opportunity. So there's this duality, there's this polarity when we talk about conflict and conflict management. Certainly, I believe the literature in this field supports, and our experience tells us in the field of conflict management, that better processes, better management, better step-by-step approaches to conflict tends to lead to better, more effective outcomes.

To understand what I'm talking about when I talk about more effective outcomes, we have to understand the concept of the cost of conflict. You'll all be well aware that the provincial budget and financial statements generally don't have a line item for the cost of conflict. It is a concept that is unknown to generally accepted accounting principles.

Yet we also know that conflict, particularly when it's poorly managed, exacts an extremely high cost. It's this concept of identifying the costs of conflict and reducing them that has drawn and attracted an increasing number of organizations, corporations and government agencies to the realm of conflict management and indeed conflict systems design in the interests of identifying those costs and reducing them. The costs of conflict will vary depending on the context, but they will include transaction costs, just the money that it takes to resolve conflicts.

Lost opportunities: When people are involved in managing conflicts, they could be obviously doing something of a more productive, more positive and contributory nature.

Satisfaction levels: This is something that's just been touched on around the table. How satisfied are those stakeholders involved in conflict situations with the way in which the conflict is being dealt with?

Recurrence: Do the same kinds of conflicts come up again and again? And very importantly, relationships: The way we handle conflicts, whether it's one-on-one conflicts or the conflicts dealing with large societal issues, what cost does that have on the relationships among the parties involved in the conflicts?

There can be a whole range of other costs and metrics can be attached; you can measure these costs. The concept of cost of conflict leads us to an understanding or helps us to understand that there are three approaches to resolving any kind of conflict, whether it's an across-the-fence neighbour dispute, or issues such as abortion, the large public policy issues.

Those three approaches are interest-based approaches, rights-based approaches and power-based approaches. You see those represented in the bottom left of the first page there, as three interlinking circles.

Power-based approaches are approaches that measure the relative power of the parties. The primary example, of course, is war. It measures the resources, the ability of each party to withstand the other, to remain standing. Short of war, we have other power-based processes for resolving disputes. Strikes and lockouts are a good example, but so are votes and referendums. A referendum

is an example of a power-based approach to resolving conflict. It's an approach that measures the resources of the parties involved in that dispute.

Power-based approaches generally lack predictability. That's one of the problems with power-based approaches. Notwithstanding that you can measure, or appear to be able to measure, the power of the parties coming into a conflict, you can never predict with accuracy the degree to which the parties will exert that power. Power-based approaches and the problems around them are maybe exemplified by the story of David and Goliath. Power-based approaches, particularly in the context of public policy decisions, also tend to promote scapegoating.

1610

Rights-based approaches are approaches to resolving conflict that focus on the relative rights of the parties. Court is the primary example. In our society, courts weigh the rights of the parties all day long. In this building, of course, you create the rights of parties: statute, regulation and so forth. Our rights come from a variety of sources and we have processes that exist for the purpose of sorting out those rights and determining who's right and who's wrong.

Finally, interest-based approaches are approaches that focus on the interests of the parties. Most of you in this room will be aware that the whole field of alternative dispute resolution and conflict management is growing rapidly both here and in the United States. I'm often told that it's a jargon-challenged field. We talk about interest-based approaches. What are we really talking about? What are those interests? Very simply, they're the wants and the needs and the fears or concerns that people have. Anyone who is involved in conflict of any sort will have certain needs, they'll have wants, and they'll have fears or concerns. Those interests will be arranged psychologically, substantively and procedurally. So there's a whole range and a matrix of interests in any particular dispute or particular issue.

In terms of conflict management, the foundational principle that sort of undergirds the whole field of conflict management is the one that you see about halfway down the second sheet, approaches to resolving conflict, and that is that generally, interest-based approaches to resolving conflict will be less costly than rights-based approaches, which in turn will generally be less costly than power-based approaches. I emphasize, when I'm talking about cost, I'm talking about the whole range of costs that I referred to earlier, not just money but relationships, satisfaction levels and so forth.

That proposition then leads us to the stairway graphic that you see, the idea that when we're approaching how best to resolve conflicts, and particularly in the public policy area, there is this notional stairway of processes and that if what we are interested in is resolving conflict, coming to public policy decisions at a lower cost, then this stairway can perhaps help us. Looking at the various steps as we work our way up from prevention, prevention processes would include things like public education on conflict resolution or on interest-based negotiation, something that's starting to happen increasingly in the schools.

Community dialogues might be an example of the next step, negotiation, informed community dialogue such as those being run, for example, by the Canadian Institute for Conflict Resolution.

Third-party assistance: involving facilitators in processes that will allow the public to feel not just that it's window-dressing consultation or some kind of manipulative process, but processes, for example, the round table on sustainable development and energy issues, as a model for what those third-party assistance processes could look like.

As we move up the stairway, we have legislation and then referendum above that, appealing directly to the people. Referendums would be above that in terms of power-based approaches. Beyond that, as we see, there is civil disobedience and, ultimately, violence. All of these of course have been seen in the past, and I'm sure will be in the future, and it sort of presents itself as a public policy process stairway.

There are a couple of slides at the end about conflict management systems, which is certainly a growing field, and designing systems for better managing conflict. I suggest to you in this committee, that's really what you folks are all about right now. This referendum legislation challenges you to design what that particular conflict management system will look like. My suggestion to you, in broad terms and in principle, is that included in that legislation there should be some front-end piece that provides for access to this stairway, some kind of processes in advance of the actual referendum.

By doing that, I suggest that you will be able to design a better system for managing conflict. You'll be able to provide a system which, over time, stakeholders will come to have increased confidence in, and that I think defines as a better conflict management system. It's a better system because it resolves conflict at a lower cost, again, keeping in my mind that full range of costs.

The final thought I'll just leave you with, and the final overhead there, is deep roots of conflict, to remind us again that in each of these public policy issues that present themselves to government for consideration, these present at multiple levels. There are presenting disputes: One group wants something, one group wants to stop something, so we have the presenting level, but beneath that there will be the whole matrix of interests that I talked about earlier: the wants and needs and fears that individuals and groups bring to those conflicts.

We know as well, though, certainly anyone who has been involved in conflict — and who hasn't around this table? — will understand that even beneath that there are these deep roots of conflict, issues that go to core values, identity issues and so forth. Certainly it is my belief and my experience in the field of conflict management that finding ways to allow those to surface, to get at those and talk authentically about those in a meaningful way, can go a long way towards reducing the costs of conflict resolution in the public forum and making better decisions. I think ultimately, of course, that's what we're focused on.

My message today has been that there is a full range of processes. Processes can be designed up and down that stairway very creatively. I think increasingly government

and, as I say, other organizations — certainly we do work with insurance companies, the Royal Bank, a variety of commercial organizations that understand we have this full range of processes. I think it's no different in the public policy forum and that referendums, because they are a power-based process, should be used as essentially a last resort.

I've included in the material a short bibliography for those who are interested in looking further at the whole issue of conflict systems design and conflict management.

Mr Silipo: Mr Weiler, you would then agree, from what you said to us, with other presenters who have said to us that referendum is really only one way — Mr Stockwell's exchange with the last deputant I think touched particularly on this. It's really only one piece of a much larger puzzle that we should be looking at. You're taking that in another direction in some ways and saying, "Look, there are lots of other ways in which you can deal with some of the problems that are out there, either before resorting to referendum or instead of resorting to referendum."

Mr Weiler: Really, that's right. I think you need to start with a principle-based approach: What are you trying to achieve? If what we're trying to do is resolve these differences that we have in society and make public policy decisions that are better decisions, how might we go about doing that? The stairway approach presents that there's an approach of processes, a range of processes, and the ones towards the bottom end of the stairway have a lower cost attached to them. Simple as that. I'm not saying that referendums have no place. They do, because not everything can be resolved low down on the stairway. But generally speaking, they should be, in my view, resorted to very late in the game.

Mr Stockwell: I found it somewhat difficult to follow your presentation. I came in a bit late. There was a tremendous amount of jargon in it. I don't know — you said you had a shortage of it? I guarantee you that you don't. There's a lot in here that's difficult to follow and I was really pursuing the questions by the member for Dovercourt.

At the end of the day, you're here to tell us that at some point in time you may have to have referendums to decide important public policy issues.

Mr Weiler: At the end of the day, referendums are an important tool, I think, in the government's toolkit, but they should not be used until the end of the day. I think that fairly summarizes what I was trying to say.

Mr Stockwell: Great. Thank you.

Mr Hastings: I'm trying to figure out, if you accept referenda at the higher part of the staircase as one alternative dispute mechanism for the big issues, then what kind of big picture issue could you settle at the first or second level of the staircase?

Mr Weiler: I appreciate the opportunity to respond to that because certainly I know there is a lot in a very short period of time here. This stairway is characterized as you go up the stairway by increased cost, increased hostility, increased frustration, and some of the concerns that Mr Borovoy mentioned in terms of diminished control or predictability of outcome.

My point is that you go up the stairway with generally each issue, even the big issues, starting out in terms of processes — consultations, round tables — but true consensus processes that have as their focus: How can we come together collaboratively to resolve these differences?

1620

Mr Hastings: Then let's apply that very specifically. In the town of Collingwood last spring, there was a major outbreak of one of those viruses. The little parasite, whatever you call it, got into the water treatment system. It created a tremendous economic downside cost for the town of Collingwood. It's ended up that they're going to have to build a new tertiary treatment plant, I believe. The businesses in that community lost a lot of money etc, yet there was no way in which the council, or some members of the council, and other leading members of that community seemed to be able to right away adopt a system like yours for dealing with that issue at the first or second levels of the staircase.

Is that a good example of where your approach could resolve a problem like that without them having to build a tertiary treatment plant? Because subsequent findings are there were only about 20 people who had the problem with illness etc, yet it was reported across the world, we found on the Internet, that this was a major, major outbreak of a problem, when in fact it was a problem, a public health problem, but not the big one that it was reported to be.

Mr Weiler: If the question is, are there processes and approaches that can assemble stakeholders and bring stakeholders together to work collaboratively to find solutions to these kinds of issues, the answer is yes. There are processes that can be facilitated, convened very quickly. Their applicability or their appropriateness depends on the context, obviously. The purpose of my presentation is to indicate that there are some underlying principles in terms of how you can reduce the overall costs of reaching those decisions and make those better decisions.

You've mentioned the media. Obviously we're in a system of governance which has led to some of the outcomes that you were alluding to earlier. Our system is one that is adversarial by nature, power-based by nature. We have appreciated increasingly that that has very high costs attached to it for all stakeholders. The broader question, which was touched on around the table, is how might we look at amending, making revisions to that system that allow more opportunity for collaborative approaches as opposed to adversarial ones?

I think the opportunity to focus on referendum and the consultation paper provides an opportunity to think about that. If the referendum legislation is brought forward, as it appears it will, I think that's great. What I'm hoping will be considered is that, as part of that legislation, we think about what opportunities there might be for other processes lower down on the stairway before you actually have the referendum.

Mr Stockwell: Or the stakeholders.

Mr Bartolucci: Thanks very much for a very unique, interesting opportunity to discuss an approach to make government work better, because that's exactly what you're saying here. It's by no accident that the steps

appear on the front cover, because it's the one that most directly affects how we can govern ourselves and manage ourselves and government. So I thank you for that.

There are processes that you can put at any step, you indicated earlier. What type of process would you put at the step between legislation and referendum to ensure that if we have to go to referendum as a last resort, it's meaningful?

Mr Weiler: Off the top, I think one of the things you would want to have there as a characteristic is information. What is the source of information upon which the decision will be based? That may be some form of public education, some form of public meetings, various ways you can communicate, but what is the source of data? What would be an acceptable source of data that would not be seen as one side or the other? How could such data, such information, be provided to the public to assist them in making a more informed decision on whatever the question was? So processes that would pertain to the provision of information is one thought that comes to mind at that stage.

The Chair: Thank you very much for your presentation.

ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

The Chair: Our next group is the Ontario Separate School Trustees' Association. I would ask that you introduce yourselves for the purposes of Hansard before you start.

Mr Pat Daly: My name is Pat Daly. I'm the president of the Ontario Separate School Trustees' Association. With me are Monsignor Dennis Murphy, the director of religious education for our association; Mr Patrick Slack, the executive director; Mr Tom Reilly, the general secretary for the Ontario Conference of Catholic Bishops. With us as well is Earle McCabe, our deputy executive director.

Founded in 1930, the Ontario Separate School Trustees' Association represents 53 Catholic school boards. Collectively, these boards educate over 600,000 students from junior kindergarten to grade 12/OAC.

In addition to providing a complete curriculum as defined by the Ministry of Education and Training, the mission of all Catholic school boards and their schools is to create a faith community that integrates religious instruction, value formation and faith development into every area of the curriculum. Our boards and our schools expect Catholic school graduates to be able to evaluate society with a critical and even countercultural eye. They expect these graduates to have developed positive attitudes which motivate them to contribute to the common good of a society that cares about the rights and the wellbeing of individuals, whatever their race, colour, sex or creed. The Catholic community believes that respect for the person, as created in God's image, is essential for school and for society.

In the province of Ontario, Catholic school boards provide this education according to the constitutionally determined rights of Roman Catholic parents. Therefore, as well as a sincere and genuine interest in the proposal

to introduce referenda as part of the system of governance in Ontario, our association has a particular interest because of the potential effect which referenda could have on these constitutional guarantees for our schools.

Our hope is that this committee in its deliberations will recognize that democracy is expressed in a variety of forms by different nation states. The particular and Canadian expression of democratic theory and process has historically recognized the protection of certain minority rights which the country has seen as essential to its wellbeing and to the common good. This is quite different from democratic theory and expression in a country like the United States of America, which is based solely on the protection of the rights of individuals.

What is immediately obvious is that referenda have significantly different effects on democracy as understood in the Canadian tradition and democracy as compared to the way it is understood by our neighbours to the south. Referenda are much more inimical to our democratic theory and process, which recognizes the protection of minority rights.

We would like to use this opportunity to bring before the standing committee on the Legislative Assembly of Ontario the most urgent reactions of the Ontario Separate School Trustees' Association to the paper *Your Ontario, Your Choice: A Preliminary Look at the Referendum Alternative*. We wish to reserve the right to make further submissions or to respond to any legislation which may be proposed. We will specifically address the legal and constitutional concerns of our association at that time.

The paper *Your Ontario, Your Choice* presents a preliminary look at the referendum alternative and is a first step in an extensive public dialogue. We trust that in the course of your extensive public dialogue you will scope out in much greater detail the important consequences of referenda on two central issues: impact on parliamentary governing and on minority rights. We are anxious to see the development of your thinking in these two critical areas. Our brief is to register our deep concerns about these two issues.

In the week that the paper has been available to us, we are prepared to make these preliminary responses:

In essence, we believe the referendum tool is not anti-democratic in certain carefully circumscribed situations for simple and concrete issues. But in the context of the level of discussion evidenced in *Your Ontario, Your Choice*, we have no choice but to go on the record at this time as saying the use of referenda is at best unnecessary and at worst dangerous. We ask that we be included in ongoing discussion in the course of your extensive public dialogue.

1630

We urge the greatest caution in the application of referenda for the following reasons.

The use of referenda does not necessarily enhance democracy. Their introduction could undermine certain aspects of the successful parliamentary democracy we have known in this province.

Reality cannot be simplified into discrete issues to suit referenda. In life, issues tend to be contingent upon each other. Only on the most concrete issues are yes/no responses normally helpful.

Referenda could result in injustice to minorities or, conversely, may be used by well-organized special interest groups to thwart the general will.

The introduction of referenda will add to the cost of government, using resources which are badly needed for other important purposes.

The system of parliamentary democracy developed in the Commonwealth, the so-called Westminster system, has been highly successful in Ontario. It is based on the following procedures.

The citizens of the province can voluntarily join political parties which develop a series of policy proposals to address in a concerted way issues faced by the province at a given time. These platforms are presented to the people of the province in an electoral process designed to promote dialogue. They provide the opportunity for detailed examination and for the development of a vision for the future. They are not isolated actions to address particular problems.

The people of the province elect representatives who will act on their behalf within the general parameters presented, but with the understanding that since circumstances can change, the application of policies may have to be adapted. When people elect representatives, they endow them with the power to make decisions for the common good even if at times they are not popular. At times, elected officials must make decisions which are not popular.

Accountability is a major factor in the subsequent election, when governments and individual representatives are judged on their total performance, not just on their position on a single issue.

In our view this form of government allows for flexibility, the balancing of issues over time and an accountability in terms of long-term vision for the province.

We submit that there would be certain dangers in the introduction of referenda into the system because, by their very nature, referenda tend to divert attention away from a comprehensive and long-term view to single issues and short-term outcomes.

Elected officials would no longer be true representatives. They would lose at least some freedom to apply their expertise and judgement. It is our view that although a few members of the public will be more knowledgeable than the average politician on any given single issue, most members of the public, through lack of interest or inattention, will be less knowledgeable. Certainly few members of the public are in the position to see the interrelatedness of issues in the way politicians can. When referenda are used, this expertise would be diminished if not lost entirely.

In our view, it would be difficult to ensure that an issue presented in a referendum would receive the exposure and explanation which issues get in an election campaign. It is important, in a democracy, for people to have enough information and explanation to make informed decisions.

Referenda can be unfair. They can lead to a tyranny by the majority or obstruction by a minority, depending upon how and to whom a question is posed. It is difficult for a majority to develop empathy for a minority position. A well-organized, special interest group could sway the

results of a referendum, especially when voter turnout is low. Above all, this method of settling an issue can bypass the dialogue which leads to the subtleties of a workable compromise position. The generation of such positions is one of the greatest strengths of our present system of parliamentary democracy.

The world in which we live is immensely complex and the variables of life are intricately intertwined. The development of policies to deal with such complexity and the development of laws to respond adequately to it is a long and complex process. The explanation of such policies is difficult and time-consuming.

In such a situation the referendum is a relatively crude and inappropriate instrument. As decision-making tools, referenda tend to lose the nuances of the issue. The possibilities of perceived or real manipulation are great. The recent experience of the Quebec referendum bears witness to these points. The question seemed to many to be unclear. Reasoned argument and the examination of fact were buried in propaganda and emotion. The bitterness lingers and calls into question the paper's conclusion that a referendum is a unifying force. Our experience in Canada shows that referenda have the potential to increase hostilities and divisions in our society.

We perceive it to be conceded by all that the introduction of referenda would add to the cost of government. The mechanism for conducting them, the process of reporting them and the information related to them would all add to costs. This argument may be viewed by some as a purely practical matter and simply part of the cost of doing the business of government. We would argue strongly that in a province where the deficit is so high, the debt is so great and services are becoming so curtailed, additional expenditures without compelling cause become a matter of principle.

The practical implications attached to the introduction of referenda are identified in the paper *Your Ontario, Your Choice*. Although our ideal is not to see referenda introduced into the governance structure of Ontario, we feel compelled to comment on some of the implications and to raise some issues which in our view are important. We reiterate our intention to respond to any proposed legislation.

The issue of minorities has been alluded to at several points. In our opinion it deserves its own consideration. It goes against everything that Canada stands for to simply subject the fate of minorities to the will of the majority. Any law on referenda should take into account two aspects of this issue. First, minorities need to be protected in the process itself through special considerations; secondly, they need to have a route of appeal if they should see themselves as unfairly disadvantaged. Without such protection we could, as a society, slip into one more form of systemic discrimination. This can happen despite an attitude of goodwill and trust.

Any law would need to contain criteria for establishing what is legitimate subject matter for referenda and under what circumstances they could be used. The existence of such controls implies the need for a body to monitor them. Ideally, those who make the law should not administer it or pass judgement on it.

Regarding the question, even professional poll-takers have difficulty in framing legitimate, clear and unbiased questions. There is also a need to ensure that questions are framed not only fairly but in a way which probes the content really aimed at. There would be nothing more confusing than to have the right answer to the wrong question. It has been suggested that the referendum question in Quebec was loaded and that the referendum question concerning denominational rights in education in Newfoundland and Labrador was also loaded and indeed misleading. We would see the final drafting of a question being at least subject to scrutiny by a neutral party.

It would be important to ensure public access to all points of view on an issue and that there be monitored rules to make certain that this is always done fairly. We would submit that the opportunity for abuse of the process by powerful interest groups exists. Some enforceable rules for equity would be necessary to limit the opportunity for abuse. Again this would need to be monitored.

1640

If referenda are introduced, they will presumably be available to all levels of government. We would see this as a potential source of confusion in the political life of the province. Different levels of government conducting their own referenda could have contradictory results on the same issue with a different approach to the question. In fact, this has been the experience in some jurisdictions in the United States. Where jurisdictions overlap or intertwine, for example, in certain social services, does a local or provincial referendum take precedence? Should the future of Quebec be decided by a federal referendum, a provincial one or a series of regional ones? There is an obvious need for an arbiter to be named before these issues arise.

For all these practical difficulties to be dealt with adequately, we would see the need for the creation of an independent commission similar to the electoral commission with all the expertise needed to perform the various tasks outlined. In addition, any law would have to contain an outline of circumstances under which appeals to the courts could be made with respect to key elements in the referendum process. This is especially true where there are grounds to feel that established rights are being overturned.

In conclusion, for all the reasons given, the Ontario Separate School Trustees' Association sees the proposal to introduce referenda into the political process in the province as problematic. As an association we have faith in the current democratic process enjoyed by the people of the province. We would ask the government to protect our current democratic process.

We thank the committee for giving us this opportunity to express our views on this important question. Any of us would be pleased to attempt to respond to questions you may have or provide further detailed information at a later date.

Mr Boushy: I'm sorry I find myself disagreeing with a lot of what you say. In one instance you said on page 3, "Referenda...may be used by well-organized special interest groups to thwart the general will." My experience has been, since I was elected in June, most appointments

with my office were from special interest groups trying to influence my decision. In referenda, to me the opposite could happen. Special interest groups' interests would disappear if everyone had his or her say in a vote rather than having special interest groups being heard all the time. You hear that and you see that almost every day. What answer do you have for that?

Mr Daly: The first part would be to question how one defines special interest groups. Part of our concern obviously is in certain groups having much greater resources and access to media and others to influence the results of a referendum, and that's specifically the issue we're dealing with. As you mentioned and indicated, many groups would come to any of us as politicians to present their views. We think that's an important part of the political process. Then it's our responsibility as politicians to consider the input we've received from the various groups, reflect on expertise provided by those who give it to us and vote on what we think is for the common good of the greater society. That would be our position.

Mr Thomas Reilly: We would discuss one concrete situation, for example. Supposing in the city of Sudbury you had a referendum about the smokestacks from Inco. Inco would probably be more influential in that situation than any other single body you could mention, not to mention the fact that because of the height of those, they're affecting Lake Nipissing, and they would have no say in that kind of thing at all. So we see situations which could be set up in that way where a particular special interest group could have an undue influence.

Mr Boushy: I can't understand that. These are special interest groups that are always vocal in elections, yet in referenda, similar to an election, these are the same people who elect you to represent them. What is the difference? Are you saying that people are making mistakes when they go to vote for an elected person?

Mr Daly: Not at all. That's why I say I think it comes into one's definition of special interest groups.

Mr Boushy: Their voice is always heard everywhere, election or otherwise.

Mr Daly: As a trustee, I don't consider the views of the people who come to speak to me on various issues as necessarily special interest groups. I think we're speaking of groups that clearly could control and dominate the discussion during a referendum debate.

Mr Boushy: The second question I have is: You say on the same page, "Introduction of referenda would add to the cost of government." We're discussing having referenda during municipal elections, for example, or provincial elections, which would not cost any money. Don't you agree with that method?

Mr Daly: I don't agree that it wouldn't cost any money to do that. I think clearly there are significant costs in the development of the question, to have some arbitration process put in place for the question, as well as groups that might be impacted by the question, and to monitor resources available to groups or committees, however that's taken care of. It would make sense perhaps that if referenda on certain issues were to be considered, the most efficient manner would be a municipal election — I don't disagree with that — but there would be significant costs, however, in doing so.

Mr Patrick Slack: I might add that I think your paper acknowledges that there is additional cost involved in the referendum because of those very reasons, that there are significant things to do around a referendum and they cost money. I can't quite find the reference, but I do recall that there was a —

Mr Boushy: It costs a bit regardless.

Mr Slack: I think it acknowledged that it would be reasonable but it would cost money.

Mr Hastings: Gentlemen, thank you for coming in today and making your views known. I'd like to concentrate only on the whole issue of minority rights, around which there is considerable mythology, chaff, legitimacy, and sort out exactly where you folks are coming from on this issue, like so many other organizations.

You have argued, for example, that referenda could be dangerous in an indirect way to the rights of minorities. Even if that were hypothetically correct, one could argue conversely that the existing parliamentary institutions in the last century were dangerous to minority rights, because the historic reality is that you folks didn't have Catholic education in certain parts of Canada in the early part of Confederation even though it was mandated in the Constitution. Correct me if I'm wrong on my history, but that's what I have up here.

Even if I'm incorrect on my interpretation of history, can you tell me how minority rights are fundamentally threatened if a government recognizes that it must deal with the Charter of Rights and Freedoms, the Constitution Act of 1982 and even the faulty BNA Act of 1867? Even if you insert safeguards into referenda — or direct elections, as I'm starting to prefer the terminology — ie, if you're going to have citizen-initiated referenda or direct election, direct government, direct democracy instruments, you have to attain a certain level of a petition, of a percentage of the popular vote, as an example from the last election.

New Zealand is an example. We heard from Mr White the other day, the Reform member of Parliament from White Rock, in which he indicated that New Zealanders wanted to put on the ballot a question about free education and health care. They were not even able to attain the minimum level of petition names to get the question inserted on the ballot for a vote.

1650

I'd like to have a reclarification from you. Aside from the Newfoundland experience, where did the Catholic Church and the Archbishop of St John's intercede and try to prevent, through the courts, the question that arose affecting minority rights on reorganization of education in Newfoundland?

I'm legitimately trying to sort out in my own mind where is the mythology part of this and where is the real reality, where I can see and appreciate more so that you have a concern, because there are two portions to that issue on minority rights.

Mr Daly: Thank you for the question. We think it's a critical one. I'll comment on the mythology, as you call it, and then ask others to elaborate.

You referred to the best example of where a minority right is being taken away in terms of denominational education rights in our country, and that's the

Newfoundland and Labrador situation. Clearly, the government of Newfoundland and Labrador has used the results of that referendum to legitimize the taking away of those rights that were part of the agreement of the province of Newfoundland coming into this country.

Mr Hastings: Does that mean then that the Charter of Rights and Freedoms and the Constitution are not real safeguards in terms of minority rights vis-à-vis referenda?

Mr Daly: In that case, they are not. The province is using the results of that to legitimize that change.

Monsignor Dennis Murphy: Historically, the kind of agreements that came into existence were the following: What happened as different provinces came into Confederation was that the federal government guaranteed that whatever religious education rights were currently in place at the time would thereafter be protected. Therefore, you have provinces that did not have such rights, such as British Columbia, such as Nova Scotia etc. There are only a few provinces actually that have constitutionally protected rights. So that's the historical basis upon which that particular minority right has been guaranteed by the Constitution.

Mr Reilly: Mr Hastings, you're accurate in the case of Manitoba, because there was a right and it was taken away by non-parliamentary means, we would say.

The Chair: I'll turn now to Mr Bartolucci for questions.

Mr Bartolucci: Thank you for your presentation, most of which I agree with. I would just like maybe to go one step further with the Newfoundland question of educational governance, because I think this is a crucial problem that any legislation will have to face, and that's the question itself.

If you look at the question that Newfoundland posed, it was open-ended so that the government could in fact interpret exactly what it wanted. So regardless of the outcome — and we're looking at what? Fifty-four per cent of the people voted, a 52% turnout, a 55%-45% majority. It wasn't great. The problem is the wording of the question. The question is worded wrong. You've indicated that you want that protection, in your brief. Who is that neutral party going to be? Any ideas? Can you advise the government as to who a neutral party in the wording of the question should be?

Mr Daly: I think that's one of the questions that we, in our document, state we think we need additional time for, but that we'd like to advise this committee and the government on. That's one of the essential issues, and we will be seeking advice and counsel before providing a specific answer to it, but one that we think needs to be looked at.

Mr Reilly: We have two ideas in there, and one of them is an independent commission. You would have to have some kind of safeguard and the highest quality people. That is where the cost comes in, I think, no matter when you run the referendum. I think that's a less important issue. The other one is the courts. You might say the courts are becoming so politicized nowadays, can we go that route, but one of those two, I think, and that is a very definite cost.

Mr Bartolucci: In an earlier example, you used Sudbury as an example of a possible referendum. Thank

God that that didn't happen, because North Bay and Sudbury aren't always agreeing these days. Certainly we agree that we should host the 2000 Canada Games, and we will work together to ensure that that happens.

Let's talk a little bit about geographical restrictions, because they're very important, and let's talk about the threshold. If in fact this government decides to move in the direction of referenda legislation, what should the threshold be? Should it be geographically restricted in any way?

Mr Reilly: I think that would depend very much on the subject matter of the referendum. Here again is where I think you need a third party probably to arbitrate on that. If there's a proposal or even if there's a vote within an area, and you set, I would say, a fairly high threshold so that it doesn't become mischievous — let's say it's 15% or 20% — and all of that is there, I think somebody should still say, "This is or is not a legitimate question to go to this particular electorate." We've had situations where people wanted to put on a local ballot paper a referendum question about nuclear disarmament. I know where I came from that was a very popular thing. When I was young, everybody wanted unilateral disarmament. Aneurin Bevin said, "You'll send me into the negotiation chamber naked," and he wasn't that attractive.

Mr Bartolucci: If it's decided by whoever that there be a referendum and that there be a threshold, then must that threshold reflect every region of Ontario? Must we gather signatures from every geographical region in Ontario?

Mr Reilly: That is interesting. The nature of Ontario would suggest that there would be a lot of merit in that. We, in education particularly, know the differences between the north and the south. What's good for Toronto ain't necessarily good even for Brampton.

Mr Bartolucci: Yes, that's very true. There are minority rights that manifest themselves in many different ways.

Mr Silipo: Your point about the need for further discussion I hope is being heard. I think we heard that from a number of groups. I hope this is really only the beginning of some discussions, although we do have, lingering in the background, the commitment of the government to come forward with some form of legislation on referenda.

We can probably prolong the discussion as we need to, to better understand the implications about the use of referenda and particularly about how we ought to look, as many people have said to us, at other parts of our governance processes and how that can be improved as a way to deal with some of the problems that one may be trying to resolve through the introduction of referenda. So I hope on the time question there is greater opportunity for your organization and others to continue the discussion with us.

I want to also focus in on this question of minority rights. Obviously, I know very much where you are coming from and why you, as an organization, would be particularly interested in that as an issue, but let me just put a notion to you. I'm not advocating it — I want to be very clear about that — but I put it to you as a bit of a hypothetical question. If we were to look as an Ontario

society at the kind of notion that was looked at in Newfoundland, that is, the end of public funding for denominational schools, in this case for the funding of the Catholic school system, how would you argue that making that decision is something that should be done through the legislative process as opposed to having that decision made through a referendum?

Mr Daly: We want to go on record as saying we're not arguing that, that that constitutional right should not be changed in either process.

Mr Slack: The addition of the referendum adds just one more opportunity which shouldn't be there to do that kind of mistake.

Mr Silipo: Right. I didn't take from what you said earlier that you would favour it being dealt with under one as opposed to the other, but I was trying to take the argument a little bit beyond. Obviously your position, if I've understood it, not just from today but from our previous discussions on this, is that here is a fundamental right that exists and it shouldn't be changed. I'm just trying to say, for the purposes of discussion, what if the day came when there was a government or, on the other hand, a group of people, citizens, empowered under a new referendum act, that felt, "Well, here is something that should be changed," as something that has existed, yes, for many years in Ontario, but for whatever reasons should be changed. How do we deal with that?

1700

Monsignor Murphy: If we were forced into the position that you're talking about, what forum do you want to have this matter dealt with in, I think we would obviously opt for the forum of the legislative processes of the province. The reason is, as we have indicated in the brief, that we think referenda can't deal with complex issues, and we feel that should there be any felt need by the population of the province of Ontario to reconsider minority rights, whether they be ours or someone else's minority rights, the forum to do this is not through a referendum or even a series of referenda, because the question is much too complex and admits of little compromise and working out of new positions at the level of a referendum, whereas through the legislative process one can begin to see new ways, perhaps, where historic rights are exercised.

The Chair: Thank you very much for your presentation. We appreciate your input and advice.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair: Our last scheduled presentation this afternoon is going to be brought to us by the Ontario Secondary School Teachers' Federation.

Mr Jim McQueen: My name is Jim McQueen. I am vice-president of the Ontario Secondary School Teachers' Federation. The gentleman to my left is Michael Walsh, who is an executive officer of the Ontario Secondary School Teachers' Federation.

Let me begin by thanking you for the opportunity of making this presentation. Also, the reason that we have taken the time — because, as you're probably aware, this government has tended to keep us busy over the last few

months — is that we feel the proposal is significant and has the potential to dramatically change the face of Ontario politics. For that reason, we have taken the time to prepare the brief and to make a presentation to you today. Let me just begin by dealing with the introduction, and then Mr Walsh is going to deal with the contents of the document briefly, and then I will summarize.

As we say on the first page, almost since the founding of Canada as a nation Canadians have been confronted by the question: How are we different from the Americans? While this is a complex question and could result in hours of debate, most analysts agree that one of the primary differences is our attitude and the philosophy of our governments towards the members of our society. As opposed to the American attitude of rugged individualism and survival of the fittest, Canadians have supported the concept of basic equity and the need for government intervention to maintain this equity nationally. This philosophy, until recently, has crossed party lines and has been the starting point for all parties to build their diverse policies.

By way of example, it is a long historical tradition, driven by geography, diversity of population and varying provincial economic resources reaching all the way back to Macdonald's national policy, the Liberals' expansionist proposals under Laurier, the CCF-NDP health care proposals under Tommy Douglas. Canadians and their governments have recognized the need to support minority groups, be they created by language, differences in ethnic background, economic deprivation or geographical isolation and hardship. Consequently, the Conservatives created the CBC and Ontario Hydro, the Liberals promote multiculturalism and French rights and the NDP promote welfare and a national health program. We use those only as examples. Obviously, there have been many other policies.

In other words, various governments in the name of the people have recognized minority rights and adopted policies which have protected minorities against the tyranny of the majority. It is OSSTF's greatest fear that an Ontario referenda law would Americanize Ontario society. Such a law would allow those well-funded and organized organizations to destroy this long-held Canadian tradition in the name of fiscal responsibility. Such a law would lead to the growth of an attitude that, "If I as an individual cannot identify a direct personal interest in a part of our social web, it must be wrong."

One of our other primary differences with the American system is that our government structures find their roots in the British tradition of representative government. At the risk of oversimplifying, representative government is based on the concept that individuals are popularly elected by all enfranchised voters in the province or the nation to exercise their good judgement based on investigation and reasoned debate, with a focus on what is best for the nation or the province as the guiding principle. If errors are made or the principle of accountability violated, then the government can be defeated at any time in its mandate or at the next general election.

A system of referenda would defeat the essential elements of representative government. Rather than reasoned debate and an informed discussion prior to

making a decision, debates in the public would be fuelled by emotion and misinformation, with decisions made on the impact of the results on the individual as opposed to the common good. OSSTF also believes that there would be an attendant loss of protection and rights of citizens by government, a right that is guaranteed by the Constitution. In relationship to accountability, we believe that governments would be able to avoid accountability for their actions, hiding behind the rationale that "They made us do it."

Returning to our original theme of the Americanization of our society and political system, we would point out that our government structure is based on a parliamentary structure, in which our citizens look to our parliaments and legislatures for protection. This is the only protection citizens have other than the long, expensive recourse of the courts. In the United States, referenda are more extensively used, and we will comment on their effectiveness later in this paper, but the American system also provides for a system of checks and balances which is specifically designed to protect individuals from wild swings in public opinion. None of these protections exist in our representative system of government, which would enhance the danger to citizens' rights as presented by a widespread use of referenda.

Michael, if you would like to go through the rest of the paper.

Mr Michael Walsh: Essentially, we would argue that the current parliamentary system is working and working well in Ontario, that there are real choices among the parties that present themselves to the electorate and that over the last number of years, since the end of the dynasty that the Conservative Party had in Ontario, there have been major shifts in the governing party in power in Ontario, representing major differences in the views that are represented in government.

This is very different from the US piece, where Peter Cooke and Dudley Moore, in describing the US political system, said, "You have your Republican Party, which is very much like our Conservative Party, and you have your Democrats, which is very much like our Conservative Party." In other words, very little difference that you can see on that front, and as a result, they have moved much more in the direction of discriminating on policy issues through the use of referenda. We would argue that they're not necessary in Ontario, that when you elect a government, you elect a government with the policies that it's put forward to the electorate, and at times, as we are seeing, that's not always in the favour of this organization.

We noticed in the discussion paper that you presented that you talked about some disenchantment on the part of voters and therefore the need to give expression to views through referenda. We would argue that the disenchantment comes when elected governments, having made very clear statements about policy issues when running for election, change their position once elected and do something completely at odds to the policies that they presented themselves in favour of during the election process.

It's this behaviour that causes the voter to feel disenchanted. I speak specifically there about the free trade

debate, about the imposition of the GST, about the GST — I'm talking here federally — not being repealed once the last government was elected; and at the provincial level, the promise, for example, from the narrow perspective that we're operating from on the education issue, that this government would not hurt the classroom with its spending cuts. We know that has not been the case.

1710

We are not absolutely opposed to referenda. There is a place for them, but we feel the place for them is on the very big issues, the constitutional issues. In that circumstance, where you're looking to change the Constitution of the country, then you should go to the electorate on that change to the Constitution. But even in that circumstance, we think that the Parliament should be taking a position before going to the referendum. In other words, they should state what it is that they wish the piece to be before going to the electorate.

We've just seen a referendum in Quebec, and there are a couple of things, I think, that are important to note from that referendum; one is that the framers of the referendum have great control over the answer that the electorate comes forward with, that the framing of the question is a particularly important piece. I think the education minister saw that in the kinds of responses he was able to get through a push-pull poll on education and teachers and the quality of education. You can elicit an answer from the electorate by framing a question very, very carefully.

Someone suggested in the Quebec media that the Parti québécois was designing a no-fail ballot for sovereignty referenda: The ballot is printed Yes in advance, and the voter writes in the question. This is not really far from the reality of the matter.

The framing of the question in referenda is going to often elicit the kind of response that a group wants, and you don't need to do that when you've got the power of the Parliament to make the decisions that you should be taking on your own behalf.

The other thing that I think needs to be remarked about on the Quebec referendum is the cost. We have information that suggests the cost of the last referendum was in excess of \$63 million. Quebec is geographically not dissimilar to Ontario in extent and the sort of wide spread of population. We believe that in conducting a province-wide referendum in Ontario, where every voter was involved, we would be looking at the potential for that kind of expense.

On both the part of cost and unreliability then, we would really urge caution on the part of the government in the use of referenda as instruments of public policy.

The other thing that comes to mind in looking at a referendum question that's put out there is, who influences, how do you influence the result of that referendum question once it's put to the electorate? I would put it to the committee that the ability to influence through the purchase of advertising in the media gives very great advantage to those interests that have lots of money to spend, that you can do much to buy the result that you want on a narrowly defined question. Again, we would argue that this is not something we should be advocating in Ontario.

The comment was made earlier about hearing from interest groups in your office, sir, and I think the fact that you can identify what organization the people are coming from and what axe to grind they have when they come and see you allows you to give real balance to how you react to the information that comes to you as an MPP. That's why we elect all of you, to do that very thing, that siphoning, that winnowing process down to what the real gist of the question is.

The other problem with referenda, and a major problem, we feel — I'm sure this has been stated to you before — is in regard to the questions themselves. For example, we could come up with a question on: Should we be limiting the amount of money that's spent on education? Should we have a single amount of money per student across Ontario, the same amount of money for every student in Ontario? On the face of it, it's a question that would win a lot of support because it's fair to every person. They're all getting the same amount of money. But when you examine the question in detail, you realize that what one should be considering are the enormous differences in the costs of educating students in various parts of this province: students with special needs, students who have just come from overseas and don't have any English or any of the first languages in their possession. You cannot ask in a referendum question a question that covers the issue in any real, meaningful way. It has to be simplistic to be able to go on to the ballot, and therefore, the information that you get from it is really not helpful.

We're a little surprised, I must admit — we say it seems ironic to us — that the government at this time is considering putting forward a bill to incorporate referenda when it just passed Bill 26, a bill which took away the powers of holding referenda by municipalities, on extra-cost items, on contracting out. Those things which were in the last municipal legislation are no longer there. In other words, you took those opportunities for referenda away at the local level. So it seems rather inconsistent to us that you would be bringing this forward.

Maybe we're a little paranoid, but we have a feeling that one of the things you might be wanting to do is to introduce a means of going to the Proposition 13 piece of California to limit education spending. Again, we feel this is not the way to move forward. Proposition 13, for example, requires two thirds of the voters to vote in favour of increases in educational spending. As a result, there have been a number of circumstances where the voters in the majority have voted for increases in funding for education, and because of the passage of that particular piece, they have not been able to get the increases in millage that they want.

We know you use opinion polls to guide you as to how the electorate is feeling about various issues that are being debated in the Legislature, and we believe they're useful for you to know what your electoral position is in taking something forward. But I think, apart from that, the real questions need to be dealt with in the House, debated fully, debated in all their complexity and passed in the parliamentary system that we have, rather than moving to a system that really doesn't fit the model we have in Ontario.

1720

Mr McQueen: I'll be very brief in our conclusion. Let me just put forward to you four recommendations that we would make:

First, we would recommend to the government to abandon the legislation on referenda.

Second, many of the concerns of the public in relationship to the activities of our political parties are in the lack of freedom of the individual member to exercise his or her will based on the requirements of their own local constituencies. What we would urge is a relaxation of the whip rules and the government rules. Obviously on money bills, since they deal with the continued support of the government, there is a requirement there that the parties insist on support, but we would suggest that on issues other than that, MPPs in any particular party should have the right to reflect the local constituents' feelings.

Third, we would suggest an expansion of proportional representation. As we all know, in many cases, governments are elected, and in the last two elections have had majority governments even though they have had minority votes. We would suggest to you a proportional representation, that perhaps the attitudes of the electorate should be reflected in adding additional members to the House based on that proportional representation.

We would also suggest a final alternative. As an example, in New Zealand, if organizations which are not part of a political party but run as candidates based on a particular platform receive sufficient votes — and I would not debate with you as to what the number of votes should be — then they get representation in the Legislature or in the Parliament in New Zealand. We would suggest to you that if groups of people can organize around issues and can receive sufficient votes across the province to reflect an interest in those issues, they too should receive some representation in the Legislature.

We would end our presentation there, with our thanks for your time, and we'd be more than willing to take any questions you may have.

Mr Bartolucci: Thanks, Mr McQueen and Mr Walsh, for your presentation. Certainly you're in the business of education, and I guess the government should understand that education is not a product but a process. It's a process that isn't subject, isn't conducive, to referenda. I think if we look at the Michigan model, you'll see the disastrous effects of referenda on education in Michigan.

A very simple question: You're suggesting that under no circumstances should this government provide an opportunity for referenda?

Mr McQueen: Yes. In summary, that's our position, with the single exception of constitutional amendments.

Mr Bartolucci: Yes, absolutely.

Mr Silipo: Thank you very much for the presentation. I certainly took that message very clearly from your presentation.

What I also found useful — I just make a comment, because I don't think I really have any questions — is that you've highlighted here a number of areas that others have also touched on. You've gone into a little bit more detail in terms of some things that we could do. I think

yours is probably one of the few presentations that actually puts this clearly out there, not just on the proportional representation but some of the other pieces: the free vote, the other ways in which we can make representative government more responsive. It certainly would be something that I, for one, would believe we ought to look at quite seriously.

I was interested earlier on in hearing some of the government members also reflect some of that sense about how we could make the system of government that we have work better, become more democratic. I hope we have a chance to take a look at some of those alternatives — I would argue prior to looking at the question of referenda in a serious way, or at the very least, in conjunction with — because I fear the government seems intent on proceeding with some form of law that's going to govern referenda, so we may have to deal with the nuts and bolts of that whether we like it or not.

Mr McQueen: We've had that experience.

Mr Hastings: Thank you very much, gentlemen, for coming in and making your views known to us on referenda. My question would be on direct election instruments. If they are as dangerous, as anti-democratic etc, as you pose them to be, then how do you account for their success, or limited success at least, in the political cultures of Switzerland, Australia, and even on a very modest scale, Great Britain? Your antidote as an improvement to parliamentary democracy — proportional representation — if it is such an outstanding model of improvement, then why does the Italian system seem to be moving away from it, as are the French, looking at major modifications of their proportional representation approach?

Mr Walsh: The second one first: We don't pretend to be constitutional experts. Our view is that where you're attempting to bring to the parliamentary chamber a clearer view of the whole population, when you have the current system, there are sometimes groups that get big segments of the vote that get left out of the equation. So it's simply one way that some other jurisdictions have of dealing with that. I think in the German system, a party that gets a certain percentage of the vote, even if it doesn't win any seats, will get allotted some seats within the Legislature. There may well be persuasive arguments why that shouldn't be adopted, but it seemed to us that it is a methodology. If the government is looking for getting more of the cross-section of views of Ontarians into the political process, this might be one that you would look at.

As far as Switzerland is concerned, you mentioned its use of referenda, and we do make some reference in the paper to that. The Swiss are tired of referenda. There've been very, very many of them over the years, and I think they're looking themselves at the rules of calling them, because it doesn't take too many people to put their signatures on a list to get a referendum. If you look at the attendance at their referenda of late, there are small percentages of the population turning out to them and often deciding questions which are not of much impact, like small issues, and therefore not attracting the vast majority of the population out.

Also on that count, even in Switzerland, where they use referenda, the government often doesn't follow the will of the people. If they don't like the answer they get from the population, they continue forward with legislation that's not exactly the same as that which framed the referendum, but still a position that they want. For example, they introduced into Switzerland the equivalent of the GST. They took that vote to the electorate three times to finally persuade the electorate to do what the House wanted to do in the first place.

You also have to take into account the political culture of the people you're dealing with. The Swiss have had a long history of this, and clearly it's something that is part of their political culture. This is not part of ours. If you're going to change to referenda, then you need to look at a whole restructuring of the parliamentary process, and I'm not seeing you suggesting to do that. I think you don't pick out one element; you need to reform the whole system if you're going to do that.

Mr McQueen: If I could just briefly add on the two issues that you raise in relationship to referenda, I think we have to look at the Canadian experience. We have not had a lot of experience with referenda. Of the two that we've had, one was on the conscription crisis, which planted seeds in this country which to this day continue to be devastating to its unity, because in that particular case, it had an overwhelming vote of, for want of better words, English Canada voting in favour of conscription and an overwhelming majority of French votes against it. That's caused, I think, an ongoing contradiction. If you look at the more recent experience of the Quebec referendum, what was solved by a 50.5% to 49.5% vote? It has not made the problem go away.

In relationship to the proportional representation, what we are suggesting is that it is the government that has identified a frustration in the minds of the public with the parliamentary system. It may not be the best idea, but what we are suggesting is that much of that frustration is caused by groups who do not feel they are playing a role in the political system yet who have issues and can get significant support for those issues. What we are suggesting to you is to recognize that those issues are there, people support the stances taken by individuals who deal with those issues and they in fact should then be represented in the parliamentary legislatures.

The Chair: Mr Boushy, do you still have a question?

Mr Boushy: Not really, except that I am still puzzled by your opposing a referendum. You seem to underestimate the intellect of the people when they go to vote. For example, you indicate that they probably will not recognize the arguments of special interest groups, that if there's a heavy advertising campaign, they will be influenced by it. It means they could be bought by heavy advertising. My experience has been completely different than that: The public seem to sort all these things out when they go to vote.

Mr McQueen: I think to some extent you're putting words in our mouth. It's not our intent to dismiss the public or the intelligence of the public. What we are suggesting is that where that intelligence is best expressed is in election campaigns, where there are in fact platforms, where issues are discussed, where there is debate

between the issues. What we fear in a referendum is that the only individuals who would have a chance of expressing an opinion would be those people who had the wealth or the media contacts or whatever — including ourselves. We could get involved in a referendum with very little difficulty.

But that is not going to allow those people on a massive scale to have input. In the conflicting information that's going to take place, it's going to be very difficult for them to determine as to who was correct. At least in the election system, you elect a government. Four or five years later, you get the opportunity to say, "Were they telling the truth or were they lying?"

The Chair: Thank you very much, Mr McQueen, for your presentation today. We certainly appreciate your input and your advice. This concludes for today our public hearings on the issue of referenda.

Mr Silipo: Mr Chair, before you adjourn, I just wanted to have some sense about where you see us going from here, given that I gather we're not now scheduled to sit again until the House resumes.

The Chair: Our research staff will be compiling a summary for all members of the committee of what exactly the presenters suggested to us. I would hope we can have a subcommittee meeting perhaps Wednesday, September 25, I think it would be, to determine where we go from here.

We still have until October 4 to receive written presentations from the public, and we still may do that.

I've certainly invited my constituents to submit presentations, so I expect we will continue to get some presentations in the mail.

Mr Silipo: So we would deal, you anticipate, through subcommittee, with the question of whether we need to schedule additional meetings, additional hearings.

The Chair: Exactly, and certainly we'll have open discussions as to where we go.

I want to thank all committee members for their cooperation.

Mr Hastings: One thing that I'd like some clarification on is that this week there were views presented as to whether there were actual local municipal referenda held on how Ontario Hydro came together. I'd like the research folks to look at the whole issue of whether that occurred or was it simply incentives from Sir Adam Beck etc that brought the local utilities together into Ontario Hydro.

The Chair: I think it would be worthwhile to get that clarification, by all means.

I would like to thank our clerk, Lisa Freedman, for all the work she's done, as well as the legislative staff who have assisted us this past week. It's certainly been a very enjoyable experience for me as Chair. Again, thank you to all members of the committee for their cooperation. The committee is adjourned.

The committee adjourned at 1735.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)
*Mr Rick Bartolucci (Sudbury L)
*Mr Dave Boushy (Sarnia PC)
Mr David S. Cooke (Windsor-Riverside ND)
*Mr Carl DeFaria (Mississauga East / -Est PC)
Mr Tom Froese (St Catharines-Brock PC)
*Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
*Mr John Hastings (Etobicoke-Rexdale PC)
*Mr Ron Johnson (Brantford PC)
Mr Frank Miclash (Kenora L)
Mr Gilles E. Morin (Carleton East / -Est L)
Mr John R. O'Toole (Durham East / -Est PC)
*Mr Tony Silipo (Dovercourt ND)
Mr R. Gary Stewart (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mrs Julia Munro (Durham-York PC) for Mr O'Toole
Mr Dan Newman (Scarborough Centre / -Centre PC) for Mr Froese
Mr Bud Wildman (Algoma ND) for Mr Cooke

Also taking part / Autres participants et participantes:

Mr Chris Stockwell (Etobicoke West / -Ouest PC)

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

CONTENTS

Thursday 12 September 1996

Referenda

City of Sault Ste Marie	M-317
Mr Stephen Butland	
Mr Andrew Staples	M-321
Uxbridge Ratepayers Association	M-323
Ms June Davies	
Ms Anne Holmes	
Mr John Deverell	M-328
Hastings County Ratepayers Association	M-331
Mr Trueman Tuck	
Power Workers' Union	M-336
Mr John Murphy	
Mr Chris Dassios	
Progressive Conservative Youth Federation of Canada	M-339
Ms Tasha Kheiriddin	
Mr Walied Soliman	
Bayview Glen Ratepayers' Group	M-344
Mr Howard Shore	
Mr David Vallance	M-349
Canadian Civil Liberties Association	M-352
Mr Alan Borovoy	
Agree Inc	M-356
Mr Rick Weiler	
Ontario Separate School Trustees' Association	M-359
Mr Patrick Daly	
Mr Thomas Reilly	
Mr Patrick Slack	
Monsignor Dennis Murphy	
Ontario Secondary School Teachers' Federation	M-364
Mr Jim McQueen	
Mr Michael Walsh	



M-22

M-22

ISSN 1180-436X

Legislative Assembly of Ontario

Assemblée législative de l'Ontario

First Session, 36th Parliament

Première session, 36^e législature

Official Report of Debates (Hansard)

Journal des débats (Hansard)

Wednesday 6 November 1996

Mercredi 6 novembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 6 November 1996

Mercredi 6 novembre 1996

The committee met at 1631 in room 151.

REFERENDA

MAX RADIFF

The Chair (Mr Ted Arnott): We are resuming our public hearings on the issue of referendums and we have with us today Mr Max Radiff, who is going to give us his advice on this issue. Mr Radiff, as you know, we have about half an hour for your presentation. We look forward to hearing your views.

Mr Max Radiff: The time restraints I'm aware of and I'm perfectly in line with them.

I'd like to begin by thanking the committee for allowing me to share with you some ideas and concerns as they relate to the consultation paper on referenda and to the referendum process in general. My hope is that in some small way I will be able to encourage the Ontario government to establish such a system of public consultation not only within the legislative processes in the province but also in the bylaw process in the municipal governments for which you are ultimately responsible.

Before I examine the various questions raised by the consultation paper, I would like to take a few minutes to share some background and some basic philosophical tenets with which you must come to grips throughout this consultation process.

The pace of change in all aspects of society and within the very demographic makeup of this country is such that one can hardly speak of evolution any longer. Change is both explosive and revolutionary. All the horses we have been betting on — a steady job, a higher standard of living, security for our old age and a better life for our children — are stumbling in the backstretch and more people than ever are looking for a meaningful role in the management of public affairs.

Our government structures were designed in the horse-and-buggy era but the duties and responsibilities of government have changed and so have society's expectations. Governments are no longer capable of meeting the challenges of a modern, educated, mobile society, not because we have run out of cash but because governments are stuck on a treadmill trying to be all things to all people and, try as they might, they cannot keep up with rapid change.

The democratic form of government is more desirable now than ever before, but the established government structures in Canada are failing miserably in their sincere and well-intentioned attempts to balance the ideals of an effective and responsive democracy with the reality of a political and bureaucratic machine of enormous proportions and virtually unmanageable complexity.

A careful examination of democratic governance and its principles leads one to realize that the system has some fairly basic tenets inherent in it.

The first holds that in a democracy the people are never wrong. Choices may not always be beneficial and errors may be made, but a system where participation in the decision-making process is limited, either on the ground that certain decisions may be too risky to leave in the hands of the people or that some issues may be too complex for the people to comprehend, is not a democratic system.

A second tenet states that in order to be positive, democratic decision-making must be a proactive process. An effective democratic system must provide the electorate with the necessary tools to initiate action and an opportunity to participate in the democratic process in a fair and orderly and civilized fashion. People must have an opportunity to effect a decision, not merely to react to decisions already made by others.

A third tenet holds that limiting democratic power leads to retribution by the electorate. Voters may be prepared to give their elected officials a second chance, but only to a point. When that point is reached, voters will begin to react to their government and will do whatever may be perceived to be an effective protest against imposed decisions.

The fourth and last tenet I would like you to consider is that retribution is a reactive process leading to negative results. Getting even is no way to run a political system. Voter retribution can take the form of strikes, boycotts, mass protests and blockades. I don't think I need to point out to this group how negative these forms of retribution can be. You've had your fair share lately.

Any system of direct democracy, therefore, must ensure that the citizens have a real ability to effect change and not merely to change the government periodically. Whether we like it or not MPPs do not represent the will of the majority of the people — they are not even elected by a majority of the citizens. MPPs represent the party line on issues and far too often that party line and all it entails becomes obvious only after an election when it is too late to do anything about it.

There are a number of advantages to the use of referenda.

First of all, a government is able to ascertain the true feeling of the electorate on an issue. Before the recent Quebec referendum, the Parti québécois claimed it had been elected to take the province out of Confederation. The referendum said, "No, you weren't; get on with the business of governing." If the federal government had put the new gun laws to the people in a referendum, there would have been no need to discipline Liberal MPs who

voted against the party line, nor for MPs to be absent during crucial votes, thereby leaving their constituents without representation.

Another advantage to the use of a referendum is that people will buy into decisions that they have helped to make. You don't help make policy decisions by electing a representative. With people buying into the decision there is virtually no chance of retribution.

A third advantage is almost a corollary of the second. During the referendum process the voters will become much better informed if they know they are going to make a policy decision that will have a significant impact on their lives. Elections tend not to be issue-oriented but rather personality contests. Far too often elections are not proactive events but rather reactive ones which tend to get rid of someone rather than promote someone. A better-informed electorate is much more capable of keeping its representatives moving in the direction the people desire.

There are three main criticisms of referendum democracy. First, many politicians and theorists feel that the voters will make inappropriate decisions. These people seem to feel that winning an election makes it possible for someone to become wiser than those who elected them. Those who are elected, therefore, should be using this wisdom to make the decisions and the ignorance of the electorate should be kept at bay. The question remains, however, that if the electorate is so incapable, then how did it manage to elect such a wise crop of politicians? Remember, the people are never wrong.

A second criticism is levelled by those who feel that there is no need for voter input into issues because elected representatives speak on our behalf and are accountable to us. Consider this: In a three-candidate election race the winner is often left with less than half the votes and, when you add this fact to the one that elections never see 100% voter turnout, you begin to realize how few people a representative really represents. Accountability at the polls is a reactive concept. If we don't like what our representatives have done we can get rid of them. In the meantime, however, we are stuck with what they did. Wouldn't it be far easier and far more productive to find out what the people would like to happen and then implement it? Sounds like a proactive and forward-moving procedure.

The third major criticism of the use of referenda is the high financial cost involved. While this criticism has some validity, we have to balance the costs with those inherent in government decisions which are made contrary to the public will. No one has ever said that democracy was the least expensive system to operate, but there are ways to hold down the costs and I'll deal with some of these later.

I would like to turn now to the concerns raised in the consultation paper, beginning on page 41, and to share some thoughts with you about each of them.

Question (a) deals with the scope of issues which might be the subject of a referendum. If the system is to be truly democratic there must be no limits on referenda topics other than the limits of the jurisdiction of the government. If the Legislature may pass laws on an issue, then the citizens should have the right to initiate a

referendum on the same issue if they feel one is necessary. Citizens should have the right to petition any relevant question, any government decision, any government inaction and even the recall of their MPP, although the process in the last case must necessarily be different.

Question (b) deals with the issue of who decides whether a referendum should be held. Both the government and the electorate should be able to initiate a referendum — the government by a motion of the Legislature and the citizens by a petition compiled in line with the rules established for them to do so. Once the petitioners have complied with the regulations, the government must not have the right to refuse to hold a referendum and it must be mandatory for them to begin the referendum process.

1640

Question (d) deals with the timing of a referendum and is obviously looking for a way to reduce costs. If it is possible for a referendum to be held during provincial and/or municipal elections, so be it, but delay in putting an issue to a vote is delay in dealing with the issue. The old adage "Justice delayed is justice denied" is easily transferred to the referendum process. There must be a time constraint applied to the process, and I would suggest that a referendum must be held no later than six months following receipt of a completed petition or a resolution of the House.

Financing referenda campaigns is the subject of question (e). Just as rules are necessary for financing election campaigns, so rules must be established to control spending by the parties in a referendum campaign. Clear limits should be set and enforced. We currently have such a system in place for elections at the municipal level, so I doubt there will be any conflict with the constitutionally guaranteed right of freedom of expression. Elections Ontario is perfectly capable of enforcing these rules. Perhaps it should be the government's responsibility to ensure that both sides of the issue are made available to the voters. After all, a referendum, other than a recall one, is not supposed to be a reactive process but a proactive one in which the voters have an opportunity to tell their representatives what they should be doing with a defined issue.

A win in a referendum should be 60% of the voters who turn out. I see no need for a double majority because if a referendum is relevant only to a certain community, ie, a municipality within the province, then a municipal or regional referendum should be held under the auspices of that particular government.

Question (g) deals with compliance with the result. It is essential that the results of a referendum be binding if the people are to have real power to effect change. If the government has the option of implementing the change or not, then the idea of the power of the people is a sham. The rules of the referendum process must clearly state that the decision of the voters is to be implemented within a specified time period such as six months. Failure to comply with the will of the people is a very serious matter and perhaps should be tantamount to a vote of non-confidence in the government. If the referendum is a reactive one, then the government must make provision to cease and desist immediately.

In question (h), we see the issues of constitutionality and legality being raised. To be quite frank, I do not have a legal background but I do know that constitutions and legal systems exist for the benefit of the people and that it is unacceptable for governments to say that what the people want is not constitutionally and legally possible. If the current rules need to be changed, so be it.

In answer to (l), a system allowing citizen-initiated referenda should be fully implemented. Only if we are truly committed to this process will it function effectively. A signature requirement of 10% of the eligible voters in the province should be established. It is true, as indicated in question (j), that too low a threshold will result in too many referenda, but too many referenda is definitely preferable to the current system which allows for none.

The wording of government-sponsored questions should be the responsibility of the government; the wording of citizen-sponsored questions should be worked out by the leaders of the movement and, if necessary, bureaucratic specialists. Perhaps using the Office of the Ombudsman might be an approach to consider. Legislature approval should be required for government-initiated referenda but not citizen-initiated ones.

I'm not sure that the specifics of initiatives should be part of the referendum process. Issues should be dealt with on a broad basis; otherwise people will become bogged down in the details and lose sight of the principle at stake in a referendum. The bottom line, however, is that the people responsible for the initiative should define the question. The government should provide someone, perhaps the Ombudsman's office, to assist citizens who might need help with complex questions. The same appointee could also be of assistance to those who need to determine whether or not the subject of a petition is really within the jurisdiction of the government concerned.

Question (m) is closely related to the previous one and could be handled in the same way. Questions that may be in conflict with current laws and/or the Constitution should be examined by the legal experts in the Ombudsman's office and, if necessary, referred to the courts for a decision. The courts should be allowed to reword contentious questions in consultation with the individuals pursuing the issue, but if the petitioners wish to do so, they should be allowed to continue the petition process unhampered.

In answer to question (n), there should be no maximum number set for referenda within a specified time period. When maximums exist, they often become goals and the purpose of a system of referenda is not to be self-serving but rather to allow for public input on important issues.

The concern of multiple questions on the same topic is not great if a referendum deals with the issues rather than the details of issues, but the broad answer to this question is simple: Any initiative which contains the required number of signatures and which falls within the jurisdiction of the government must be included on the ballot. In answer to the second part of the question, namely, should the government or the Legislature be able to place a counter-initiative on the ballot alongside a citizen's initiative, I would give a qualified yes — qualified

because inherent in this concern is the "we versus them" attitude which seems to dominate politics these days and which the referendum process is trying to negate.

Question (p) gets at the problem of paying for referenda. As I said before, democracy is not famous for its low costs of operation. If we are to be concerned primarily with low-cost government, we should be looking into absolute dictatorship. The costs of referenda, however, can be reduced if municipalities conduct the vote using continually updated voters lists — voters lists which indicate whether a voter is a resident of the municipality as well as a ratepayer there. Telephone voting could be established for those who reside in unorganized areas of the province.

Municipalities should be reimbursed for their out-of-pocket expenses, ballots should be printed centrally and distributed to the municipalities, and the clerk of the municipality should be given the responsibility of overseeing the voting process, subject, of course, to the offices of Elections Ontario. As far as electronic or mail-in voting is concerned, question (q), there should be a thorough investigation of the effectiveness and costs involved before a move is made in this direction.

The remainder of the questions, with the exception of (u), all deal with the details of the voting process, and these can be worked out by those who have the legal expertise in the electoral field. The chief guiding principle they should use is one of the tenets mentioned earlier, namely, "an effective democratic system must provide the electorate with the necessary tools to initiate action and an opportunity to participate in the democratic process in a fair and orderly and civilized fashion." In fact, all your deliberations on the topic of referenda must be guided by this fundamental concept.

The answer to the last question — should a minimum level of voter turnout be required before a referendum is valid? — is no. There is no minimum set for electing representatives, so why should one exist for selecting solutions to problems or expressing concerns? Municipal elections are notorious for their low voter turnout, but the results are still binding.

I would like to end by making an urgent appeal to this committee to put a comprehensive referendum system in place in Ontario. I would also like to urge you to pressure the Minister of Municipal Affairs to amend the Municipal Act to allow municipalities in Ontario to adopt a system of binding referenda within their municipal borders. The change in the act may be permissive, although prescriptive would be in the better interest of the voters. At the moment, ministry officials say that such action is not possible under the current legislation. If the government of Ontario wishes to include a model in the legislation, I would suggest that the Rossland, British Columbia, bylaw is a proven one to follow.

The Chair: Thank you, Mr Radiff, for your presentation. I intend to allow about three minutes per caucus for questions, and I will start with the Liberals.

Mr Gilles E. Morin (Carleton East): In your presentation you seem to be extremely positive as far as referendums are concerned. Do you see any negative aspects of referendums?

Mr Radiff: Some of the ones that came out in the paper indicate that there are costs involved; that's negative. Sometimes you'll have too many referenda; that's negative. But if you don't approach this whole thing on a positive basis, it won't work. If you're always looking for the pitfalls, that's where you're going to be: in a pitfall.

Mr Morin: What about the danger, for instance, where legislation took years and years to introduce and implement and, all of a sudden, because of the whim of the government in power, they decide, "We don't need that law any more; pass a referendum and we'll get rid of it"? What do you feel about that?

Mr Radiff: If the people want it and the people are right, they've got it. That's the way it should be. That's what democracy is all about. Just because the government has decided that "This is the way we should go" doesn't mean that's the way we should go, according to the people. I'm very much a democrat — with a small "d," please, although being a Democrat in the States these days isn't so bad — but if the people want something different and are prepared to go out and vote in favour of something different, that's exactly what they should have.

Mr Morin: But that's the danger, sir. Sometimes it could be the will of a minority that wants to destroy the whole system, and that is the danger.

Mr Radiff: But I don't think you're going to get a minority supporting a referendum and winning a referendum. You've got to have 60%. If 60% of the people have to vote in favour of the change, then it's no more of a minority than you've got now. We have a minority of the people making the laws now.

1650

Mr Peter Kormos (Welland-Thorold): I appreciate your submission. I think the issue is a fascinating one.

To follow up on Mr Morin, the concept of the tyranny of the majority, which is something that's been written about and discussed in democratic institutions for decades, centuries, I appreciate you've placed it at 60%, but what if a majority of Ontarians wanted to eliminate every bit of, let's say, Bill 8, the French Language Services Act?

If we simply adopt the referendum approach that is being discussed, how do we protect the minority from the will of the majority? There are some of us who don't think that is democracy in its entirety. That's perhaps a tribal form of democracy; it's been described as a tribal democracy. How do we protect the minority from the majority?

Mr Radiff: I don't quite know how to word this. I have more faith in the people of Ontario than that system says. I don't think the people in Ontario are going to do that. I don't think the people anywhere in a democratic system would do that. The majority of people support the French language, so they're not going to opt out.

There are bogeymen in the system, and that's what this is, a bogeyman. I think the tyranny of the majority is a bogeyman that we look at even now. Theoretically you represent the majority of the people, and you have the tyranny; you have the right to pass the laws. You see the demonstrations down in front, and the people are saying, "This is a tyranny." This is the way it's operating. If the

people had a say in some of the changes that are being made, if we asked the people, we'd probably end up with the same things. The gun laws are a classic example. If they had put the gun laws to a vote, they would have passed a referendum, there's no doubt about it. But we had all these problems that came out of it.

The other thing is that if you pass it, people buy into it, and as a result you've got the people supporting this thing. If people want to put on a referendum about getting rid of French-language training and the majority supports it, which I'm convinced they would by a long shot, then everybody is buying into that decision. We say, "We support this," and then we work towards it to help it.

Mr Kormos: Have you considered proportional representation and what that would mean in terms of a parliament or a democratic body being more reflective of the community that elected it? In other words, what was the percentage of support in terms of the overall Conservative vote in the last election?

Mr John Hastings (Etobicoke-Rexdale): It was 45%.

Mr Kormos: So 45% of the Legislature would be Conservative, 30-something per cent would be Liberal, and New Democrats were at 17%, I think, somewhere around there. Would you support that sort of model? It's obviously a European model that's prevalent and works well in Europe.

Mr Radiff: It's definitely better than what we've got now but it still doesn't get round the problem that representatives represent a minority of the people in a riding. They really do. I hate to say that to make you feel bad, but if you take a look at the number of eligible voters in your riding, how many of them turned out to vote, first of all?

Mr Kormos: Down where I come from we got pretty high voter turnout.

Mr Radiff: Did you? Okay.

Mr Kormos: And they're not to blame.

Mr Radiff: Did you get 50% of the eligible voters?

Mr Kormos: I didn't last time. That was the toughest election in my life. But I did the two times before.

The Chair: Thank you, Mr Kormos. I have to cut this off due to time constraints and turn to the government side.

Mr Tony Clement (Brampton South): I just want thank Mr Radiff for his very worthwhile presentation. We haven't met for a couple of months, so it's good to be reminded of some of the core reasons for wanting to look seriously at the referendum alternative.

I'm coming at it from a slightly different angle from that of my friend Mr Kormos, but I'm just wondering why you put the threshold for the passage of a referendum at 60%, why you were not enamoured of 50% plus one?

Mr Radiff: For the same reason that we talk about representatives not representing the majority of people. If you make it at 60%, then you've got a better chance of getting the majority of the citizens. I don't know how much you know about the vote count when it comes to referenda. Rossland, British Columbia, has had a system on this for years. They know that whenever there's an issue on the table they get a way higher voter turnout than they normally do. I think the 60% wouldn't guaran-

tee it but it would give you a pretty good shot at having a majority of the citizens eligible to vote in favour of something.

Mr Clement: So you're trying to take into account the fact that not everybody turns out.

Mr Radiff: That's right.

Mr Clement: Do you have any thoughts at all, when it comes to citizens' initiatives, on what the petition system should be like? Should it be 5% or 8% of the voters?

Mr Radiff: No, it's 10%. That's one of the things I mentioned.

Mr Clement: Would you do that province-wide or would you try to segment that regionally?

Mr Radiff: It has to be province-wide, I think. If it's going to be a Legislature of Ontario issue, then it's got to be a province-wide thing. That doesn't mean you've got to have 10% by a region. It's 10% across the board.

Mr Clement: So if it's concentrated in —

Mr Radiff: If we got a whole slew of them out of Toronto, then that I could see as maybe a problem. But then the people get to vote outside of Toronto.

Mr Clement: Torontonians are people too.

Mr Radiff: That's right. They certainly are people and they pay one heck of a pile of taxes to this government.

Mr Clement: That's right; quite so.

The Chair: Thank you very much. We appreciate your information and your advice today.

ASSOCIATION CANADIENNE-FRANÇAISE DE L'ONTARIO

The Chair: Next I'd like to call forward representatives of l'Association canadienne-française de l'Ontario, Mr André Lalonde. We may have to interrupt you with about five minutes left on the clock so that the members of the committee can go and vote. I hope you understand that.

Mr Kormos: Chair, if I may, I don't know if they've been consulted as to whether they prefer to be interrupted or to wait until —

The Chair: They have indeed.

Mr Kormos: Okay. God bless.

Mr Daniel St-Louis: We don't mind that.

Mr André Lalonde: That's fine. Mr Chairman, I'd like to present Daniel St-Louis, who will be accompanying me in the presentation, and I'd like to present my son, Jean-François Lalonde, who's here on the Take Our Kids To Work project today. He's been with the president of ACFO in meetings since very early this morning and he'll be with us until quite late tonight.

Monsieur le Président, membres du comité, l'Association canadienne-française de l'Ontario est heureuse de pouvoir soumettre dans le cadre de cette consultation publique ses commentaires sur le document de réflexion du gouvernement visant les consultations par voie référendaire.

Notre association regroupe un bon nombre d'organismes d'envergure provinciale que compte la communauté franco-ontarienne ainsi que 22 chapitres locaux. L'ACFO a pour objectif premier de défendre les intérêts des 550 000 francophones vivant en Ontario et de promouvoir le bien-être de cette communauté.

L'ACFO reconnaît la pertinence de cette forme de consultation pour orienter les politiques publiques. Nous ne saurions prendre position dans le sens contraire, puisque nous avons déjà pris part activement dans une démarche référendaire, c'est-à-dire, celle de 1992 sur les accords constitutionnels de Charlottetown. Devant la réflexion que porte le gouvernement provincial sur cette question, il va de soi que l'adoption d'une loi d'encadrement référendaire viendra confirmer l'importance de cette forme de participation publique au processus politique ontarien.

Bien que nous acceptions l'usage de cet outil, notre association demeure très prudente quant à ses modalités d'application. La voie référendaire ne peut et ne doit pas être utilisée abusivement, et l'Assemblée législative doit conserver la primauté de la loi. Les dispositions législatives régissant l'utilisation des référendums doivent donc être claires et sans ambiguïtés. Elles doivent également établir des critères qui limiteront la portée et l'usage qui en sont faits.

Notre position s'appuie sur deux fondements essentiels :

Les systèmes parlementaires canadien et ontarien disposent déjà des mécanismes nécessaires pour assurer la bonne marche des affaires courantes de l'État ; par exemple, les élections à intervalle régulier, un processus législatif et exécutif bien établi, un système juridique structuré, et d'autres encore.

Or, il nous apparaît important de ne pas dérober les élus et les représentantes et représentants de l'État des responsabilités qui leur incombent.

L'exercice du droit de vote lors d'un référendum implique que l'électeur ou l'électrice est appelé à prendre position sur une question pour laquelle les législateurs ne se sentent pas aptes ou n'ont pas l'autorité voulue pour trancher. En ce sens, ce vote est un geste qui revêt un caractère particulièrement important. C'est un acte solennel de la part de l'électeur et de l'électrice qui ne doit pas perdre sa valeur en raison d'un usage trop fréquent ou d'une application sur des questions courantes.

En se fondant sur un usage restrictif de la voie référendaire, l'ACFO invite le gouvernement et la législature tout entière à considérer les modalités de fonctionnement suivantes :

D'abord, la tenue d'un référendum devrait être du ressort de l'Assemblée législative. Celle-ci devrait voir à formuler et débattre de la question, organiser le scrutin et assurer un bon déroulement du vote. Naturellement, sous l'autorité de l'Assemblée, cette tâche devrait revenir au bureau du directeur général des élections.

Un référendum provincial doit être circonscrit qu'à des questions sous l'autorité pratique ou constitutionnelle de la province. Toute question qui irait au-delà de son autorité ne pourrait avoir force de loi.

Le référendum ne doit pas devenir un outil pour permettre à la majorité d'abuser de la minorité ou d'imposer sa volonté sur cette dernière. En raison de ce principe, tout projet de référendum qui porterait atteinte aux droits des individus et des collectivités prévus par la constitution canadienne, par la Charte canadienne des droits et libertés et la Charte des droits de la personne de l'Ontario doit être jugé irrecevable.

Sur cette question, l'ACFO insiste tout particulièrement. Le référendum ne peut être utilisé pour retirer à une communauté minoritaire un droit qui lui est déjà acquis, constitutionnel ou non. Nous croyons fortement que les droits fondamentaux ne doivent pas être soumis aux aléas circonstanciels de l'opinion publique. Forcément, si les droits d'un groupe d'individus ou d'une collectivité sont en jeu, ce groupe ou cette collectivité doit-il aussi donner son assentiment à toute modification de ses droits.

Si la tenue d'un référendum résulte d'une volonté populaire de soumettre une initiative aux électrices et aux électeurs de la province, le projet de loi sur les consultations référendaires devra contenir des dispositions claires sur les modalités d'acceptation d'une requête. Il faudra éviter qu'un référendum résulte d'une frivolité d'une personne ou d'un groupe d'individus.

Would this be a good time for me to stop, Mr Chair?

The Chair: I would say. Excuse me, but I have to interrupt you at this time. The committee is adjourned for approximately 12 minutes.

The committee recessed from 1702 to 1717.

The Chair: I'd like to resume the committee meeting. If you could start again where you left off, Monsieur Lalonde.

M. Lalonde : Nous étions en train de revoir un certain nombre de points. Au quatrième point, nous parlions de la tenue éventuelle d'un référendum à la suite d'une volonté populaire. Nous disions à ce moment-là qu'il faudrait éviter qu'un référendum résulte de la frivolité d'une personne ou d'un groupe d'individus restreint. Ceci pourrait entraîner la tenue fréquente de référendums sur une multitude de questions de moindre importance ou d'intérêt limité.

Il faut donc éviter de banaliser l'importance des référendums. Une pétition portant les noms d'au moins 10 % des électrices et des électeurs ontariens devrait être requise pour qu'une question référendaire aille de l'avant sans obtenir, au préalable, l'accord de l'Assemblée législative. Dans de telles circonstances, cette dernière doit toutefois rester responsable de l'organisation et de la tenue du scrutin et de voir à donner suite au résultat du vote.

Par ailleurs, nous estimons qu'un référendum ne devrait être reconnu que lorsque 50 % plus une des voix exprimées favorisent le projet et que 70 % des électrices et des électeurs inscrits se sont présentés aux urnes. Le choix de question doit aussi pouvoir permettre une réponse claire, «oui» ou «non». À défaut de tels résultats, il serait mal avisé pour les élus d'agir dans un sens ou dans l'autre, la légitimité du processus lui-même étant alors en cause.

Enfin, pour limiter les coûts associés avec la tenue de référendums, les consultations devraient s'organiser autour de scrutins déjà prévus ; par exemple, les élections provinciales et municipales. Pour éviter toute confusion ou pour noyer l'enjeu, le nombre de questions soumises devrait être limité.

L'adoption d'un projet de loi sur les référendums doit contribuer à enrichir notre système démocratique et la société ontarienne dans son ensemble. En ce sens, l'Association canadienne-française de l'Ontario souscrit

au principe évoqué par le gouvernement ontarien dans son document de réflexion :

«Les propositions en vue d'utiliser le référendum doivent être vues...comme un moyen parmi d'autres de permettre la démocratie directe dans le cadre de notre système parlementaire et, ainsi, de renforcer les liens qui unissent tous les citoyens et citoyennes de l'Ontario.»

Sur la base de ce principe, il nous apparaît invraisemblable de voir dans l'usage des référendums une panacée qui permettra de régler toutes les questions problématiques ou les enjeux fondamentaux en société. Cet instrument démocratique doit être utilisé parcimonieusement et avec justesse. La voie politique et la voie juridique demeurent toujours les principales portes d'accès pour le règlement de différends en société.

Par définition, un référendum a deux conséquences majeures : il oblige l'électorat à faire un choix sur une question bien précise et il élargit le débat à l'ensemble de la population. Or, ces deux facteurs tendent à polariser la société. Le Québec nous sert pertinemment d'exemple à cet égard. Les référendums de 1980 et de 1995 ont créé des séquelles durables dans les relations entre individus au sein des familles québécoises et dans la société en général, en plus d'entraîner des incertitudes très coûteuses.

Bien qu'en initiant ce projet le gouvernement ontarien souhaite rallier la population et la rapprocher de ses institutions politiques, la réalité nous montre que les résultantes d'une telle démarche ne correspondent pas toujours à ce louable objectif. Au contraire, elles peuvent souvent entraîner la division et des coûts à moyen et à long terme.

Nous invitons donc le gouvernement ontarien à agir avec beaucoup de prudence et pondération dans les choix qu'il fera quant au projet de loi sur les référendums. Merci.

The Chair: Thank you very much, M. Lalonde. We have time for some questions, and I'll turn to the New Democratic caucus first.

Mr Kormos: Thank you kindly. You were here when I made my comments to the previous presenter and I spoke of this concept of tyranny of the majority. There are some, clearly, who think that democracy is as simple as the prevailing majority, and that is to say that the majority can create a society which is a very discriminatory or oppressive society to certain classes of people if those people are not in the majority, if they're in the minority.

You also appear to have restricted your support for referenda to some very narrow, very restricted, very controlled forum or issues.

What would your response be, if we're talking about what is democratic and what is not, to the concept of proportional representation, such as many European countries have in their parliaments or chambers, where, if a certain party receives X per cent of the popular vote, they have that percentage of representatives in a legislative body? That would mean the New Democrats wouldn't have formed a majority government in 1990, that the Liberals wouldn't have formed a majority government in 1987, that the Conservatives, because the majority of Ontarians didn't vote for the Conservatives and their policies, wouldn't have formed a majority Parliament in

Ontario now. Have you reflected at all, during the course of your work on this, on the issue of proportional representation?

Mr Lalonde: No, not specifically, but our preoccupations, I think, are quite clear. We are quite aware of the danger when a majority imposes its will or takes away rights, constitutional or not, from the minority. Although we may think this is not possible today, moods do swing, things happen, and the majority today also is not necessarily the majority tomorrow. We're quite preoccupied and we would like to see a law that would not allow this to happen on a whim, on a fancy, because of some immediate political problem. Therefore, if referendums are to be held, there must be a very high standard, in our opinion.

Mr Kormos: I should explain, you see, it's my view that notwithstanding that the majority of people in our provincial community may not support minority language rights, it's the job of legislators sometimes, yes, to be directed by the electorate in a direct way, other times to lead. It's my view that legislators have a responsibility to protect a minority in the instance of minority language rights.

In the instance of same-sex spousal benefits — as you know, that was an issue in the last government — it's my view, notwithstanding that, as it was then in 1995 or 1994, the majority of Ontarians might not endorse it, that legislators had a responsibility to protect the rights of that minority that may not have had a level of popular support. It's interesting, because I share your concerns about the approach to referenda because of what it does to those sensitivities.

Mr Lalonde: I might add that we believe we must use the various ways and means and tools that are available to us to exercise democracy, and referendums are only one. There are other means: The election of representatives is one, the judicial system is another one, the executive function is another one. We believe that a combination of those can provide for real democracy. To say that we should forget everything else and make referendums the ultimate decision-making power would certainly go against what we have proposed today.

The Chair: It's the turn of the government caucus now for a couple of questions.

M. Clement : Je veux vous remercier pour votre présentation. Ma question est la suivante : si c'est clair que les référendums sont sous la juridiction de la Charte canadienne des droits et libertés et sous la Charte des droits de la personne de l'Ontario, est-ce qu'il est plus possible d'appuyer un référendum en Ontario ?

M. Lalonde : Oui. Notre position, c'est qu'on ne peut pas s'opposer de façon catégorique à tout référendum. Cependant, en plus des préoccupations que vous mentionnez, je pense qu'il est essentiel aussi de mentionner que les standards doivent être élevés.

Je me rappelle encore les 10 questions qui ont été posées en Californie hier soir. Il y avait deux postes à élire, plus la présidence, et il y avait également 10 questions. Quel a été le résultat dans la participation de la population ? Le «turnout» — excusez le mot — était très bas. Donc, ça a eu un impact qui n'était pas désiré. Mais le fait de pouvoir permettre tant de questions et pas nécessairement toutes des questions d'envergure fait en sorte qu'on perd l'importance du référendum.

M. Clement : Les affaires constitutionnelles etc.

M. Lalonde : Et c'est extrêmement important que ça ne puisse pas renverser des décisions constitutionnelles et des droits, soit sous la Charte des droits de la personne ou sous la Charte canadienne des droits et libertés.

Mr St-Louis: If I may, as a complement to the last element, just return to the example that was used in the previous presentation on the French Language Services Act: Even with the Ontario Charter of Rights and the federal charter, the French Language Services Act does not come under the auspices of either of those two, so it could theoretically be subject to referenda. This is one of the areas where the association certainly feels some concern about the kind of use that could be made of referenda. So the question of the Charter of Rights does not necessarily encompass all aspects of rights of individuals and collectivities.

1730

M. Hastings : Merci pour votre présentation de l'Association. Ma question porte sur un exemple peut-être d'un pays qui a connu l'impact de décisions négatives contre la minorité quand la constitution de ce pays a situé vigoureusement les droits de la minorité de ce pays.

Do you have an example of a country where there are referenda and they actually had a question which had a negative impact and had a loss of minority rights in that country, even though they had a constitution in place and a similar charter, a set of circumstances like we have here? Has there actually been an historical example?

M. Lalonde : Il n'y en a pas qui me viennent à l'esprit à ce moment-ci, mais je suis convaincu qu'il est possible d'en trouver puisque les droits de minorités ont été enlevés dans certains pays à certains moments, que ce soit par un système dictatorial ou dans d'autres circonstances. Donc, on va certainement se charger de vous en fournir des exemples. Mais tout de suite je ne m'attendais pas à cette question-là. Je n'en ai pas qui reviennent.

Cependant, même là où ce n'est pas une question aussi directe que celle-là, cette question a été posée dans tous les débats sur les droits à l'éducation confessionnelle à Terre-Neuve. Peu importe la réponse qu'on y a portée, il reste que ça a été une très grande préoccupation de la population et des législateurs. C'est encore une question que se pose, je crois, le Sénat canadien.

M. Morin : Je voudrais féliciter premièrement mes deux collègues, M. Clement et M. Hastings, de s'être exprimés d'une façon aussi agréable et aussi franche dans la langue de Molière. Ça me renverse. Vous devriez le faire peut-être plus fréquemment en Chambre.

Je voudrais, M. Lalonde, vous remercier de l'excellente présentation que vous avez faite. Ce que j'ai aimé, c'est que vous avez compilé dans quelques pages toutes les inquiétudes qui moi personnellement me mangeaient et aussi plusieurs de mes collègues.

M. Hastings faisait allusion à la question des minorités, si vous connaissiez des exemples semblables où on avait abusé des minorités. La question devrait être posée de la façon suivante : croyez-vous sincèrement qu'il devrait y avoir des mesures nécessaires pour empêcher que l'on n'abuse des minorités ou encore qu'on n'enlève les droits des minorités ? Je pense évidemment que ça a pris des années avant que la Loi 8 ne soit créée, et il s'agirait tout

simplement qu'un gouvernement, peu importe lequel — je ne fais pas d'accusations — sent une opportunité de se débarrasser d'une certaine loi parce qu'une minorité dans un certain coin dit, «On veut se débarrasser de la Loi 8 ; ça coûte trop cher.» Alors, qu'est-ce que vous dites là-dessus ?

M. Lalonde : Si les référendums ont un certain pouvoir, à ce moment-là — il y a un exemple que j'aurais dû mentionner, de fait, tantôt qui me vient maintenant à l'esprit. C'est le Règlement 17 ici même en Ontario en 1920, où il y avait de l'enseignement en français dans bon nombre d'écoles de la province, et ce depuis très longtemps, depuis les premiers établissements en Ontario. À ce moment-là, par décret du gouvernement, on l'a rendu illégal.

Donc oui, c'est tout à fait possible que ça se produise si on donne aux référendums le même pouvoir qu'on donne à un gouvernement. Notre histoire nous rend probablement très nerveux et très prudents sur ce plan-là.

M. Morin : Est-ce que vous avez considéré la forme qui devrait exister, par exemple ? Vous demandiez tout simplement que la question soit préparée par l'Assemblée législative. Qui serait sur ce comité-là ? Les trois partis ? Est-ce que ça devrait être un organisme détaché de l'Assemblée législative ? Est-ce que vous avez eu le temps d'y réfléchir ?

M. Lalonde : Non, nous n'avons pas développé les modalités, mais nous avons tenté plutôt de suggérer au comité certains grands encadrements qui permettraient ensuite de développer des modalités. Mais nous en sommes restés là, à ce qui nous semblait être une question de standards, une question de respecter les lois du pays, et aussi une question de très grande prudence pour ne pas permettre la tyrannie par la majorité qui a été mentionnée tantôt.

M. Morin : Je vous remercie, M. Lalonde.

M. Lalonde : Ça me fait plaisir.

The Chair: Thank you very much for your presentation this afternoon. We appreciate your advice.

MAXIMUS PERERA

The Chair: Would our next presenter, Mr Maximus Perera, come forward. Unfortunately, due to time constraints I have to ask you to keep your presentation brief, Mr Perera. We have about 20 minutes, but we certainly look forward to your presentation.

Mr Maximus Perera: Fortunately the first speaker has introduced the subject very well, and the responses I have provided mirror the responses he has given except in just two cases.

Under question (e) I had provided an answer saying no, but I think I have had enough time to have some second thoughts on the subject. I think there has got to be some rule-making regarding the disclosure of the contributions and who the beneficiaries are.

Of course, looking at what's happening in the States relating to referenda and initiatives, there is a lot of money involved. I think it might be nice to have some type of legislation covering those aspects about, if you are going to retain some type of polling company, whether they should have the same privileges regarding

the limitations, the thresholds, whether they should be 5% or 10% in their case, things like that. It's something that will have to be looked at carefully.

Listening to the submissions that were made before by the French-language types of questions, they relate to paragraph (j). I had said, in the case of initiatives, as long as they are not in violation of the Constitution and don't contravene the Charter of Rights and, of course, are within the areas of provincial responsibility. I would like to add another condition to that: that whatever referenda are to take place, they don't extinguish existing rights or privileges that citizens of Ontario have under existing legislation. That would guarantee whatever rights they have now.

I would like to suggest to you, ladies and gentlemen, that is something we need to have. The existing system of democracy in the province doesn't provide much excitement because there is no commitment or participation by the electorate. We have to do something to stimulate the interest of the average Ontarian. I think this is a good tool that could be used to do just that. Without too much delay, I would like to see legislation covering this whole area of referenda in Ontario.

That's my submission, if there are any questions.

The Chair: Thank you very much. We do have some time for questions from each of the caucuses. I'll start with the government caucus. Are there any questions for Mr Perera?

1740

Mr Hastings: Mr Perera, can you think of an example of a referendum question that could advance minority rights rather than decrease them? Strengthen them? The theme running throughout all these submissions has been generally the concern, which is a legitimate one, that somehow or other, even with constitutional stuff built in, minority rights could be adversely affected. I'm just wondering if you can think of a set of circumstances the reverse way, where a referendum question could advance minority rights, further protect them.

Mr Perera: No, I couldn't think of anything at this stage. I looked at what is happening in Switzerland and Australia, but there was nothing much that we could gather in those areas relating to the minority rights aspects. All in all, in Ontario we have been very liberal in the sense that there have been privileges and rights extended to the minorities, whether they be ethnic or language types of things.

Mr Clement: I noticed that you have opted for a 5% minimum threshold in order for a citizens' initiative to be put on a ballot. You're still comfortable with that? You don't think it's too low?

Mr Perera: There have been suggestions that a 10% threshold would be fine, but I think it an undue burden that would be placed on the proponents of a referendum. One of the things I am suggesting is that they do not get any funding from the government. Considering that, I am comfortable with the 5% limit rather than 10%.

Mr Clement: That makes it, in a sense, more accessible, doesn't it? Because if it was 10%, you'd probably have only the organized groups in society that would have the ability to use the legislation to their advantage. This makes it more accessible to the general population.

Mr Perera: Exactly. That's what I was thinking about.

The Chair: Turning to the Liberal caucus now, Mr Morin.

Mr Morin: No, I don't have any questions.

The Chair: Turning to the New Democrats now, Mr Kormos.

Mr Kormos: I understand if a referendum is binding. What's the difference between this and polling, let's say, which is done by all types of governments all the time?

Mr Ron Johnson (Brantford): Not us.

Mr Kormos: Mr Johnson said, "Not us." He had a grin on his face because even he knows.

What's your sense of the distinction between a referendum, appreciating that it's binding, and polling? Governments do it all the time. They want to know what public opinion is. Notwithstanding the history of governments like Brian Mulroney's and David Peterson's and the last provincial government, governments are obsessed with thinking that they are doing things that are in response to the electorate but they inevitably find themselves turfed out. How do you see a distinction: surveys versus referendum, mere polling versus referendum?

Mr Perera: With polling, of course, you are getting a sense from a sample of the population. You don't go to the entire electorate to find out their feeling on a particular issue. That way, it doesn't form part of the democratic process. In the same way, in plebiscites you have a referendum but the government is not obligated to carry it out in case they get a positive response. That too I find a little unacceptable. You're asking the people, who have the power, "What is your sense on this particular issue?" When they have said, "Yes, we like it," or "We don't like it," the government changes its mind and doesn't accept it. I find that not very satisfactory.

Mr Kormos: I'm sure you, along with others, indicate that there's no need to have a minimum number of people participating in the referendum as long as there's a majority support of the people who did vote in the referendum.

Mr Perera: Yes, I think I have worded it that way somewhere in the submission. Anyone who is civic-minded and is interested in the process, they are the people who are going to come forward and vote. If you don't go and vote, I don't think you have the same rights, because you haven't been part of that process.

Mr Kormos: But the suggestion earlier, and I suspect it's been before this committee before, is the concern about the fact that even when you have a government elected by the largest single bloc in a given riding, it's not necessarily a majority of the voters, because we have voter turnouts that range from very low to modest. There was concern expressed about that. That was being portrayed as something of a shortcoming or flaw in the electoral system. Wouldn't the same shortcoming or flaw exist in a referendum system?

Mr Perera: The potential for more people to be involved and to get excited about it is much better in a referendum than the existing election process, because people don't feel they are part of the process now. Sometimes they throw their hands up and say, "Okay, we know that party A is going to come into power because party B's record, when it was in power, was terrible." People basically know that they're not going to get back into position.

Mr Kormos: You also say no restrictions on campaign spending or advertising. I'm trying to think of a scenario. Let me use one, let's say, with the beer companies, which as you know spend millions; Lord knows how much they spend on advertising. If there were a referendum on the issue of advertising beer or controls on advertising or a greater restriction on access to it, the beer industry, it seems to me, would have incredible resources and good reason to invest them. How would you balance the power in the types of campaigns that could be launched by the respective parties?

Mr Perera: If the companies or any particular organization has got the capital to throw into advertising, when you get the general public, their point of view, I'm sure people in Ontario are rather knowledgeable and could easily pick up what is true and what is false. No amount of advertising is going to change the outcome. It may probably be good for the economy, for the advertising industry.

Mr Kormos: I'm sure among the proponents of referenda would be the ad industry and the publishing industry.

Mr Perera: So be it, if they are willing to throw money.

Mr Kormos: What were the results of the referendum, Chair, yesterday in Michigan on casinos? Does anybody know, as a point of information? Casinos were an issue in Michigan yesterday, in the presidential election.

Mr Bill Grimmer (Muskoka-Georgian Bay): It's not reported on here. They've got everything else covered here.

Mr Kormos: Nobody knows the result?

The Chair: We're almost out of time. We'll have to check on that and have someone get back to you.

Mr Clement: It's one of life's little mysteries.

Mr Kormos: Perhaps legislative research could inquire about that.

The Chair: I'll tell you about it afterwards. I was watching the TV this morning.

Mr Kormos: It'll knock the daylight out of the Tories' gambling endeavours once the Yanks get —

The Chair: Thank you very much, Mr Perera, for your presentation this afternoon. The committee stands adjourned. We'll meet again at the call of the Chair.

The committee adjourned at 1748.

ERRATUM

No.	Page	Column	Line	Should read:
M-19	236	1	34	infamous Plainfield speech in which he cited that

CONTENTS

Wednesday 6 November 1996

Referenda	M-369
Mr Max Radiff	M-369
Association canadienne-française de l'Ontario	M-373
M. Daniel St-Louis	
M. André Lalonde	
Mr Maximus Perera	M-376
Erratum	M-377

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)
Mr Rick Bartolucci (Sudbury L)
Mr Dave Boushy (Sarnia PC)
Mr Carl DeFaria (Mississauga East / -Est PC)
Mr Tom Froese (St Catharines-Brock PC)
*Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
*Mr John Hastings (Etobicoke-Rexdale PC)
*Mr Ron Johnson (Brantford PC)
*Mr Frank Miclash (Kenora L)
*Mr Gilles E. Morin (Carleton East / -Est L)
Mr John R. O'Toole (Durham East / -Est PC)
Mr Tony Silipo (Dovercourt ND)
Mr R.Gary Stewart (Peterborough PC)
Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Ted Chudleigh (Halton North / -Nord PC) for Mr Boushy
Mr Tony Clement (Brampton South / -Sud PC) for Mr Froese
Mr Peter Kormos (Welland-Thorold ND) for Mr Silipo

Clerk pro tem / Greffier par intérim: Mr Tom Prins

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

CA 20N
XC 20
-220



M-23

M-23

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 20 November 1996

Journal des débats (Hansard)

Mercredi 20 novembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 20 November 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 20 novembre 1996

The committee met at 1539 in room 228.

REFERENDA

The Chair (Mr Ted Arnott): I'd like to call this meeting of the standing committee on the Legislative Assembly to order. We have before us our issue of referenda which we are continuing to work on and we're pleased to have Philip Kaye here today, who has been with us of course during our public hearings. He has prepared two papers which summarize the recommendations that the committee heard over the course of the public hearings, as well as a potential framework for how we might work towards preparing our ultimate report.

Your subcommittee met right before this meeting and what we decided to do was have Philip make a presentation this afternoon and then have a preliminary discussion of some of the issues, if committee members want to do that, but more so questions of clarification.

At the conclusion of Philip's presentation, Mr Clement will briefly give an overview of what the government's view is at this point in time. Then what we are going to try and do is have each caucus take these recommendations back to their caucus meeting next Tuesday so that we can have another meeting next Wednesday and get down to the business of actually writing the report. Today is just going to be more of a presentation of the summary of the recommendations and we'll actually start physically, hopefully, writing the report next Wednesday and get moving in that regard.

If I could turn now to Philip and ask him to make his presentation of the two papers that he has prepared.

Mr Philip Kaye: Thank you very much. As members are aware, I have prepared a memo entitled Committee's Report on Referenda, which has a potential framework for the committee's report. In preparing this memorandum I have looked carefully at the summary of recommendations in the submissions made to this committee and this potential framework should be read in conjunction with the summary. The order in which questions are posed under this potential framework heading corresponds in general with the organization of the summary of recommendations in the submissions.

Another document which has been distributed today which should be of assistance in reviewing the issues which have been raised before the committee is entitled Revised Overview of Provincial Referenda, which was prepared by David Pond of the research service, and it contains a table of referendum legislation in the other provinces. As I go through the framework I will be referring periodically to this table of referendum legislation, as well as to the summary.

I should emphasize that this framework is potential and of course members are free to reject it, to amend it, to add to it, to delete from it, but hopefully it will be of assistance in defining the issues which the committee may decide to address in its report.

Starting on page 2, the first general issue that is posed deals with the concept and scope of referendum legislation. In the summary, these topics are dealt with under "Subject Matter of Referenda" at the beginning of the summary on pages 1 to 6. Also, on pages 39 to 42, under the topic "General," there is a subheading, "Concept of Referenda," and on pages 40 and 41 there are some general statements made either in support or against the concept of referenda, with some witnesses highlighting the accountability aspect of referenda and others concerned about the bypassing, in their minds, of elected representatives.

Under item 1 under the framework, the question is posed: Should there be legislation authorizing the holding of provincial referenda? If you look at the table of legislation you will notice that all the other provinces, apart from Nova Scotia, have referendum legislation. If the committee decides that there should be legislation, then a series of questions have to be answered.

The next question raised under item 1 is: On what subjects should referenda be permitted? This is raised in a very general sense and, as I said, it corresponds with the beginning of the summary at pages 1 to 6, where there are general statements; for instance, the first one being made by Patrick Boyer that referendums should deal with issues of transcending provincial importance and not administrative or regulatory issues.

Topic number 2 is entitled "Options Re: Initiation and Legal Effect of Referenda," and that topic is discussed first in the summary at page 6. The first question asked under this topic is: How should referenda be initiated? In the consultation paper there is reference to three ways, in general, in which a referendum can be instituted: One is government initiation; another is statutory requirement; and third is citizen initiation. I've taken that kind of categorization and broken down the options under discretionary referenda, mandatory referenda and citizen initiatives.

The general question "How should referenda be initiated and what should be the legal effect of the approval/disapproval of a measure or a proposed measure in a referendum?" really has to be asked under each of these different options.

For discretionary referenda, either the government or the Legislature in theory could have a discretionary power to launch a referendum. That question is posed first and then if there is such a power, on what issues? Then, what should be the legal effect of the results of the

referendum? Should, for instance, the results be binding? You could have a discretionary referendum, yet once the referendum is instituted, the results would be binding.

In British Columbia, under their Referendum Act the cabinet has the discretion to hold a referendum on any matter of public interest or concern, but once it decides to hold the referendum, if more than 50% of the ballots cast vote the same way, the result is binding on the government initiating the referendum. The legislation in British Columbia says that in such a case, the government must, as soon as practicable, take steps within the competence of the province that it considers necessary or advisable to implement the results of the referendum.

The second category of referendum in terms of initiation would be a mandatory referendum; in other words, there would be a requirement in legislation that a referendum be held under certain circumstances. The second question raised under mandatory referenda is, if there is such a requirement, then under what circumstances must a referendum be held?

In terms of other provinces and legislation requiring referenda under certain circumstances, in Alberta, under their Constitutional Referendum Act, a referendum is mandatory prior to any vote on a resolution for a constitutional amendment. Also in Alberta, under the Alberta Taxpayer Protection Act, a referendum is mandatory prior to the introduction of a bill imposing a general sales tax.

There are also statutory requirements for referenda in British Columbia pertaining to constitutional amendments and in Manitoba prior to legislation raising certain taxes.

I should say as well that when it comes to discretionary referenda, there is widespread legislation authorizing those: federally, in Alberta, British Columbia, Newfoundland, New Brunswick, Prince Edward Island, Quebec, Saskatchewan, the Northwest Territories and the Yukon.

The third model of initiating a referendum is the citizen-initiated model. A general question pertaining to this model would be: Should there be provision for citizen initiatives whereby citizens, by petition, may propose and require the holding of a vote on their own ballot questions? If yes, what issues could be subject to an initiative vote?

Currently there is initiative legislation in British Columbia and in Saskatchewan. The subject matter for an initiative in British Columbia is any matter within the jurisdiction of the Legislature. In Saskatchewan it's any matter within the jurisdiction of the government of Saskatchewan.

1550

The procedure by which an initiative vote is launched involves the circulation of a petition. The petition procedure raises several questions pertaining to time limits, the threshold in terms of how many signatures have to be obtained and other issues.

You'll notice that next to time limits the question is posed: How much time should be provided for gathering signatures on the petition? In the summary on page 9 there is a list of various proposals made to the committee in terms of how much time should be allotted for signature gathering. You will see quite a variation, from there shouldn't be any maximum or it shouldn't be less than a year or it shouldn't be less than 365 days to it shouldn't

be more than 12 months, it shouldn't be more than 360 days, it should be 90 days, it should be 120 days.

Another issue which I just mentioned has to do with the signature threshold: How many signatures should be obtained before a petition is successful in the sense of requiring a vote? On pages 9 to 12 of the summary there is a list of several proposals regarding the petition threshold ranging from 2%, 3%, 5%, 10%, 15%. When these petition thresholds are proposed, they may distinguish between votes cast in a previous election or eligible voters. That is a question for the committee to address, assuming the initiative model is adopted, when it comes to the petition threshold.

It is asked at the bottom of page 2, for instance: Should they be set as a percentage of votes cast in the previous election? Should the formula be based on a percentage of eligible voters? There is also a reference to whether or not the signature requirements should have a geographical component.

Looking at the signature requirements in British Columbia and Saskatchewan, which are the only two provinces which provide for initiatives, in British Columbia the threshold is at least 10% of the registered voters in each electoral district, and in Saskatchewan it's when 15% of the electors sign the petition.

Another question posed at the bottom of page 2 pertaining to petitions is whether or not there should be a prohibition against the gathering of signatures for profit. A few witnesses addressed this issue and they are listed on page 12. They favoured a prohibition against profit gathering of signatures.

The final question pertaining to petitions, posed at the top of page 3 — this corresponds with page 14 of the summary, under "Initiative without Referendum" — is: Where the petition requirements have been met, should the government have the option of seeking to implement the initiative without holding a referendum?

The next issue dealt with under initiatives is entitled "Legal Effect: Role of Legislature and Government." The question raised is: What should be the legal effect of an initiative vote on a proposed measure? More particularly, what action, if any, should be required by the Legislature or the provincial government in response to an initiative vote?

The recommendations the committee received on these questions are listed on pages 12 and 13, and there are various models that were put forward before the committee. There are references as well to British Columbia and Saskatchewan. If you look, for instance, at the bottom of page 13, it's mentioned that under British Columbia's legislation, a draft bill that's approved in an initiative vote must be introduced by the government for first reading, but there is no requirement on the part of the government to pass the bill. So that is one model in terms of the legal effect of an initiative vote: The bill has to be introduced for first reading.

Another model is in Saskatchewan, and there the initiative vote is not binding on the government in any way.

At the bottom of page 12 there was a proposal that if a measure is approved in a vote, it should simply go to the Lieutenant Governor for royal assent, that the Legislative Assembly be bypassed altogether. The proponents

of this recommendation say that if that's constitutionally not possible, then once a measure has passed in an initiative vote, the Legislative Assembly should give it three readings within a week and then submit it to the Lieutenant Governor for royal assent, and it should be proclaimed in force within five days of royal assent.

Another model, at the top of page 13, would say that once a measure has been approved in an initiative vote, it should be deemed to have passed second reading in the assembly and should be referred for consideration and report to a committee of the assembly.

Yet a further model would say that if a bill proposed by initiative is approved by the electors, it should be enacted by the Legislative Assembly without substantive amendment and then submitted for royal assent.

Another kind of initiative would involve a vote on legislation which had not yet received royal assent. On page 3 of the memorandum I ask: Should there be provision for the legislative process to be suspended for a certain period, during which time citizens could petition for the holding of a vote on the bill in question? What should be the legal effect of such a vote? On page 13 of the summary under the heading "Repealing Bills (Prior to Royal Assent)" there is a recommendation that raises this kind of model.

Finally under initiatives, there's reference to the concept of recall, which is discussed in the summary on pages 14 and 15. The consultation paper raised recall under initiative. The basic question pertaining to recall is, first of all: Should there be a method for the recall of elected officials? You can see in the summary that a variety of opinions were received both for and against recall.

If a method for recall is supported, it has to be asked: How much time should be provided for gathering the signatures on a petition? What should be the signature requirements for a successful petition? So similar questions as those pertaining to the circulation of a petition for an initiative vote would be raised with a recall.

Topic 3 is entitled "Defining the Issues for Voting." The first heading is "Responsibility for Drafting Referendum Questions." A key question is: Who should have responsibility for drafting the text of a referendum question? Should a distinction be drawn between responsibility for drafting the questions in referenda initiated by the government or the Legislature and responsibility for drafting the questions arising from citizens' initiatives?

This issue of responsibility for drafting the questions is discussed in the summary on pages 16 to 18. Some of the recommendations range from it should be prescribed in statute, it should be set by the Legislative Assembly, a committee of MPPs and citizens should be involved, and maybe an all-party committee should have a role, to other kinds of proposals.

1600

Once it's been determined who has responsibility for drafting the question, the wording of the question has to be set, and that is asked next in the framework document. The wording of the question is discussed in the summary on pages 18 and 19.

Some of the proposals the committee received on the wording of the referendum question were fairly specific.

For instance: The ballot should offer strong and weak versions of Yes and No to allow both proponents and opponents to understand the nature of public attitudes and guide future actions accordingly. So instead of simply having choices of Yes or No, there should be (a) Yes, strongly support; (b) Yes, with reservations; (c) No, strongly oppose; (d) No, reformulate; and (e) No, postpone.

Further questions pertaining to the ballot dealt with whether there should be a prohibition against multiple questions that address the same subject matter; for instance, should the government or the Legislature be able to place a counter-initiative on the ballot alongside a citizens' initiative? The issue of multiple questions is discussed on pages 19 and 20.

The next topic in terms of the referendum process under the framework is number 4, "Deciding the Outcome," and the issue of turnout, which is raised on page 21 of the summary: Should a minimum level of voter turnout be required before a referendum result is valid? You'll notice that there were proposals that there should not be any minimum participation percentage set to there should be a requirement of a voter turnout of 50% to the requirement being proposed of a turnout of 70%. In Saskatchewan, if a referendum is held as opposed to a plebiscite, there is a requirement of a turnout of 50% of the eligible voters.

A further question pertaining to the actual voting deals with the formula for passage. It's raised at the top of page 4 of the framework document and in the summary on pages 21 and 22: What should be the criteria for determining the outcome of a referendum vote? Should approval of a measure require support by a simple majority or some other percentage of votes cast? Should the outcome instead be based on a percentage of eligible voters? Should there also be geographical criteria requiring support, for example, in a certain number of electoral districts?

In British Columbia, an initiative vote is successful if, first, more than 50% of the registered voters support it, and second, more than 50% of voters in 66% of the electoral districts support it. So there's a geographical requirement. In Saskatchewan, in the case of a referendum, the result is binding if more than 60% of the ballots cast vote the same way.

Under topic 5, "Referendum Operations," the first issue addressed is the timing of a referendum. In the summary, there are recommendations on timing on pages 23 to 25. Essentially, the proposals come down to there should be a separate date for the holding of a referendum or a referendum should be held in conjunction with a provincial or municipal election or there should be some formula allowing for the possibility of a separate date or a referendum election held at the same time as another election.

The question is asked: Should a distinction be drawn between the dates for referenda initiated by the government or the Legislature and the dates for citizens' initiatives?

A further issue under referendum operations deals with regional or local referenda discussed in the summary on

pages 25 to 27. A general question is whether or not provision should be made for conducting referenda on a regional basis. This issue was central to the submission from the city of Sault Ste Marie, which proposed that a referendum be province-wide only if it is intended that the outcome will help guide a province-wide application.

Also on the topic of regional and local referenda, the question is asked in the framework document: Should a municipal constitution be enacted which would allow voters, first, to petition for a referendum on any bylaw after third reading and prior to final adoption and, second, to petition the relevant council to initiate a bylaw?

The committee received extensive material from the city of Rossland, British Columbia, on what is known as the constitution bylaw. That constitution bylaw is summarized at the bottom of page 26 and at the top of page 27, and there were two witnesses who proposed models similar to the ones in Rossland, British Columbia.

Voting mechanisms is another issue under referendum operations, discussed on pages 27 and 28. The central question is whether some form of electronic, telephone or mail-in voting should be used as an alternative or in addition to traditional polling methods. Various opinions are expressed with support but also concerns about the security of alternative methods of voting.

Campaign regulation is addressed in the summary on pages 29 to 31, at least the financing aspect. The general question is whether or not there should be limits on contributions, spending and advertising in a referendum campaign. Several points of view are expressed; for instance, on spending limits, that there shouldn't be limits or there should be limits.

The committee didn't receive extensive evidence on the issue of financing. There were references to the Quebec model with umbrella Yes and No committees, but apart from that there really wasn't much presented to the committee in terms of what is happening, what the experiences have been in other provinces.

Another question under campaign regulation is: What role should the government and the Legislature play in the campaign? That question is discussed in the summary on pages 33 and 34 under "Governmental/Legislative Participation."

The final issue under campaign regulation is, how can voter awareness of the issues best be ensured? That's combined with the topic of advertising in the summary on pages 32 and 33.

Another referendum operation issue has to do with the frequency of referenda. On page 36 that issue is addressed, the question here being: Should there be a maximum number of referenda within a specified period?

On pages 38 and 39, the issue of minority rights is raised. The committee received conflicting views on this issue, the question being, does the use of referenda raise an issue of minority rights? For those who felt such an issue really wasn't raised, the existence of the Charter of Rights was considered very important. On the other hand, a concern of those who felt minority rights might be threatened was the kind of debate that could occur during the referendum campaign itself.

1610

Finally, in the framework document, topic 7 entitled "Other," the first issue raised is separate legislation. It's really more in the nature of a technical question: Should a separate act on referenda be enacted or should referendum legislation be part of the Election Act?

Under the heading "Political and Electoral Reform," discussed in the summary on pages 43 and 44, the key question is, does the rationale for referenda suggest the need for certain political and electoral reforms, with some witnesses favouring more free votes and a system of proportional representation.

These questions I've reviewed highlight issues which the committee may decide to address in its report on referenda.

The Chair: Thank you very much, Philip. That's excellent. I guess we've decided we're not going to get into a great debate about these questions today, but do any committee members have questions for Philip on specific aspects of his presentation at this time?

Mr Tony Silipo (Dovercourt): Yes. It's certainly not on the substance but just on the structure of this, if I may. One question and a suggestion, I think.

First of all, I think this framework that's suggested to us is very helpful because, as Philip was going through it, I was remembering a number of the points that were being made, and he himself of course referred to a number of those, throughout the hearings. Regardless of what positions we take on each of these issues, it's a very useful way to go through.

I just have a couple of areas that I've noted down that I'm not sure how best to deal with. I've got a couple of suggestions, but it seems to me that we also should deal with them.

Under section 5, "Referendum Operations," the regional or local referenda point that's made, it seems to me that we ought to make reference also, either there or, if it fits better, somewhere else, to the point of local jurisdictions, that is, municipalities or school boards, themselves having the right to hold referenda. I know that's also the subject, and I confess I'm not entirely clear, of another piece of legislation that's going through. But I just think, given that we talk here about the notion of referenda as it applies to potentially regional or local issues, the converse of that also ought to be picked up somewhere. I don't think anybody spoke to us about that during the hearings but it's an issue that I suggest we might just want to flag as something to pick up.

The other is a broader one which is this notion — again, I don't recall anybody raising this — of whether there is any merit to those same bodies, whether they are municipalities or school boards, also having some rights to initiate province-wide referenda as something that maybe comes back to the beginning of the discussion around and may be a subpart under citizen initiatives. I don't have a position on that but it just seems to me, as part of the checklist, that might be something useful to contemplate.

The other area where I have a specific suggestion is that I think the section that's suggested here — I think it's under section 2, "Recall," the last piece of that —

probably fits better — again, assuming that we have something to say on it. But even if we don't, it seems to me it would fit better as part of the very last section you're suggesting, "Political and Electoral Reform," because I see that as being more a part of that framework of discussion than part of the referenda piece directly. That's just another suggestion that I would make.

Having said that, I just want to reiterate that I think it's a very useful outline that will be helpful for us in putting our report together.

Mr Tony Clement (Brampton South): If I could just respond to Mr Silipo's point regarding municipal referenda, my recollection was that it was raised by at least one and possibly two of the groups that presented to the committee as a potential issue, so I would echo his comments that perhaps we would want to delineate that further.

The Chair: Any other questions? Philip has noted those concerns and I am sure we will respond to those. At this time, could I turn to Mr Clement, if he could give his brief overview of the government's direction.

Mr Clement: Just for the record and for my colleagues, as we discussed in the subcommittee, I do not have a formal report per se that I can present to you but I am quite willing to share with you my interpretations of the PC caucus's views on this particular issue. I can report to the committee that this was a topic of discussion at the caucus retreat that we had earlier, just before the session in September. We were able to have at least a general discussion at that time with our caucus colleagues about some of the issues.

I should say as well at the outset that not all the issues raised in this very able document were discussed with the caucus, and I might indicate that as I go through this. Just as my gentlemen friends across the way are going to go back to their respective caucuses, we are going to go back to our caucus on Tuesday for some specifics where there is merit in doing so.

Having said that, I think I can speak for my colleagues in saying that, as a caucus, we are quite in support of specific referendum legislation which would be permissive in the sense of allowing a process for referendums to occur in Ontario, not only in the sense of government-initiated or -mandated referendums, but also in the sense of citizen-initiated referendums as well. To go through the list, on question 1, as I say, the caucus would say that we should be permissive, that there should be a specific legislation authorizing the holding of referendums within any topic within the jurisdiction of the province.

In terms of the initiation and legal effect issues that are raised in point 2, discretionary referenda, the Legislature should have the discretionary power to hold a referendum on any issue, as I think is the consensus, and that the legal effect in all cases, but in this particular case certainly, would be binding in terms of the results.

In the case of mandatory referendums, I think we had a pretty clear position delineated in the election campaign that certainly on constitutional issues and on the issues of new taxes there would be a mandatory prerequisite. It was also mentioned in our campaign that we, as a government, would like to proceed with some form of

referendum on casino gambling, although that might be seen as a separate issue as part of the government's commitments rather than something that you would incorporate in the legislation per se.

With respect to citizens' initiatives, there should be provision for citizens' initiatives via a petition of citizens requiring the holding of a vote. My reading of caucus is that the time limits should be relatively permissive, so that in terms of the circulation of a petition we should be looking at something longer than 90 days, perhaps 180 days, but I'd like to go back to the caucus to see whether there is a specific number they have in mind.

In terms of a signature threshold, I think the consensus was that we are looking at something like 5% or 8% or 10% of eligible voters, and again I want to go back to the caucus to see whether there is a particular number that they have in mind. It might be closer to 5% rather than 10%, if I read caucus correctly.

I have a personal opinion about the gathering of signatures for profit. I don't particularly like that idea, but that is not something that I discussed with caucus before and I'd like to get their point of view on it.

1620

Mr Silipo: Are you getting a geographical breakdown within that 5% to 10%?

Mr Clement: No. My reading of our discussion was that there wouldn't be.

The question on the top of page 3: I confess I hadn't thought of this before, although it was part of some of the representations and I guess I didn't key in on it. I would like to get a bit more input on that. I think where the caucus is coming from in terms of being permissive on these things is that it would be consistent with the rights of the government and the Parliament that they can introduce a bill at any time on anything. This would be consistent with that, so the answer to that question would be yes.

In terms of the legal effect, I think there is no question that the government must be required to introduce a bill. Whether it is at first or second reading is an important issue, so we would like to get more specific on that.

The issue of whether a bill which has not yet received royal assent can be held up: I'm not sure whether that is consistent with where the caucus is coming from. Again, I will seek specific recommendations on that, but if I had to guess, I would say the caucus would say the government has the right to introduce whatever legislation it wants to introduce and if persons, after seeing that legislation passed, decide that it is contrary to their views on what the interests of Ontario should be, then they should initiate a citizens' petition for a referendum to overturn that decision. But I will definitely get back to the committee on that.

With respect to recall, I would like to refer that one back at this particular time.

On part 3, "Defining the Issues for Voting," there has to be some interaction between the Legislature and petitioners, in particular, in terms of the text of the referendum question, and indeed perhaps when government is initiating a particular referendum question. We heard a lot of, shall I say, distrust that if it was left specifically in the hands of one party or a dominant force

in the Legislature, there might be some injustices that occur. I guess everyone is thinking about what happened in Quebec and some of the past experiences that we have had in this country recently on the question, so I think we have to develop, and have input from the opposition parties as well, the idea of an independent commission or some other means of testing that the wording is seen as objective and fair.

If I detect the mood of the PC caucus correctly, I think the mood is towards simplicity and getting to a majority vote on some of the issues so that when we look at the issue of multiple questions or minimum levels of turnout, things that diverge from how we conduct elections, in a sense, we're leaning more towards not requiring any specific targets and minimum levels of voting, not requiring anything above a 50%-plus-one margin — and I'll get to the minority situation in a second — and not requiring any specific targets in terms of areas of the province, such as in the British Columbia model, having to be represented in the referendum result.

With respect to part 5, "Referendum Operations," the timing of the referendum, I think we are leaning towards the permissive side, that is to say to allow it to be in conjunction with or separate from, depending upon the circumstances; with respect to regional or local referenda or municipal referenda, again on the permissive side, allowing the formulation to occur at the municipal level as well, and at the regional level.

In terms of electronic, telephone or mail-in voting, again being permissive, allowing this technology, if it makes sense in the particular circumstances, to occur but not tying ourselves necessarily to that technology.

In terms of campaign regulation, I would like to refer that back and get a sense from caucus; the same with the frequency of referenda.

With respect to minorities, we might want to talk about that a bit more, but at first blush our view is that there are sufficient protections within the Human Rights Code and the charter, and specifically the Charter of Rights and Freedoms, that would ensure that if a referendum question is not automatically passed by its passage, it still has to be passed by the Legislature, which is subject to the Charter of Rights and Freedoms in its action. So there is a sufficient assurance that the action of the Legislature and of the referendum process would not contravene the Charter of Rights and Freedoms, which are in part there to guarantee the protection of minorities from the abuse of power by the majority.

Separate legislation on page 5, part 7, is more of a technical question which might be at the discretion of the government.

Political and electoral reform is a very valid and important topic that must be continuously discussed by

this committee and by legislators but I, at first blush, do not see it as part and parcel of this particular agenda.

The Chair: We have now concluded the business of this meeting so I would — sorry, Mr Silipo.

Mr Silipo: I found Mr Clement's presentation helpful because, as I said in the subcommittee, it will assist me in going back and discussing this further with my caucus to know, at least to the extent that the government members have taken some positions, what those are.

There is just one other issue that I forgot earlier which I hope there will not be disagreement about the need for this somewhere to be reflected. Maybe it fits under number 5; I'm not sure. It relates somewhat to the timing but it's not part of timing, and that is around the cost of referenda. We heard some clear presentations on that topic, so I hope we'd agree that this would be reflected somehow in the report.

The Chair: Duly noted.

Mr Rick Bartolucci (Sudbury): I'd ask that Mr Clement bring back the item with regard to geographical thresholds. It's not my recollection, and I sat for the entire week — I thought by and large the government members who were sitting on the committee had a consensus that they wanted some type of geographical thresholds, so could you go back to your caucus just for clarification?

Mr Clement: Sure. Absolutely.

Mr John O'Toole (Durham East): I have not participated in any of the referendum discussions earlier on. On the timing, number 5 on page 4, I wasn't clear on Mr Clement's comments on that. You seemed to imply to me that under the elections act, whether municipal, provincial or federal — does that not mean some local school board can request a referendum and have some access to creating that to happen outside of those prescribed dates of municipal or federal or provincial elections?

Mr Clement: Not on their own.

Mr O'Toole: No, but would there be the opportunity to require some level of government to have a referendum outside that period?

Mr Clement: I think by the formulation that we discussed, it would be that if the government of Ontario felt it was necessary, then they could require it. Alternatively, if the local body, be it a school board or a municipality, gets the requisite number of signatures, they could force the issue.

Mr O'Toole: On to the municipal ballot.

Mr Clement: Or otherwise.

Mr O'Toole: Or otherwise.

The Chair: That concludes the business of today's meeting. We will meet again next week on November 27 and continue writing our report.

The committee adjourned at 1630.

CONTENTS

Wednesday 20 November 1996

Referenda M-379

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)

*Mr Rick Bartolucci (Sudbury L)

*Mr Dave Boushy (Sarnia PC)

*Mr Tony Clement (Brampton South / -Sud PC)

*Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Mr John Hastings (Etobicoke-Rexdale PC)

Mr Ron Johnson (Brantford PC)

*Mr Frank Miclash (Kenora L)

Mr Gilles E. Morin (Carleton East / -Est L)

*Mr John R. O'Toole (Durham East / -Est PC)

*Mr Tony Silipo (Dovercourt ND)

*Mr R.Gary Stewart (Peterborough PC)

Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mrs Julia Munro (Durham-York PC) for Mr Grimmett (3:30-4:00)

Mr Douglas B. Ford (Etobicoke-Humber PC) for Mr Grimmett (4:00-6:00)

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

M-24



M-24

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 27 November 1996

Journal des débats (Hansard)

Mercredi 27 novembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 27 November 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 27 novembre 1996

The committee met at 1547 in room 228.

REFERENDA

The Chair (Mr Ted Arnott): We are continuing our work on the issue of referendums which was referred to us by the government some time ago. As members know, we're working today towards writing a report that we would table in the Legislature.

By way of introduction, I want to indicate to the committee members what I intend to do as Chair in this meeting. First and foremost is to recognize Mr Clement, who's the whip for the governing party on this committee, to report back his findings after discussing this issue with his caucus; then in turn recognize the opposition caucuses to report in general terms what the discussion was at their caucus meeting; then hopefully we will turn to the research paper that was prepared for us by Philip Kaye. I hope every member of the committee has a copy of it because it's the structure I intend to follow with the various questions and issues that have to be resolved, and we'll have a specific discussion on these various issues as we work towards a report.

Before I start on that I draw to the committee members' attention a paper prepared by Susan Swift, research officer, in response to a question that Mr Silipo had concerning municipal and local boards' power to conduct referenda. I hope that satisfies any questions committee members may have had.

I turn now to Mr Clement for an explanation of the position of the government on this issue in general terms.

Mr Tony Clement (Brampton South): I can report to the committee that my colleagues on this committee from the government side were able to have a discussion of, I think, considerable importance to the caucus at the last meeting of the government caucus. We were able to derive some further direction from the caucus on some issues that were left a bit open-ended, I suppose, at our first go-round in September. I should also report that we are continuing to canvass our caucus on some specific issues although we got enough direction, even on those issues, to bring to the table for this afternoon.

The caucus generally was in favour of a system of participatory democracy which would involve both referenda, as mandated by the government, and citizens' initiatives. I derived some quite specific instructions on thresholds of signatures closer to the 10% end rather than the 5% end of the population so we could get some direction that way.

The general consensus seemed to be against a geographic splitting of the province in terms of signature requirements, but we are continuing to canvass on that.

That seemed to be the effect of the discussion we had in caucus.

The consensus of caucus was that recall was a separate issue that should be dealt with separately. They directed us not to make it a part of the final report of this committee.

The general opinion I got was that we were trying to balance the benefits of referendums with some thresholds that would allow us to ensure that referendums would be used as a tool for a canvassing of genuine political opinion rather than having a situation that would make it easy for minority opinions to capture the process. So there was an interest in some checks and balances primarily through the thresholds.

Local and regional referenda: There was no problem seen in that way.

Campaign regulation: I'm still canvassing opinions on that one in terms of advertising, spending and contribution limits. Perhaps some of my colleagues can help me out here, whether they derived a consensus that I didn't see on that one. We're continuing to canvass our caucus on the applicability of contribution limits, spending limits, advertising limits in a referendum campaign. I would have to say that was the only issue we were unable to derive a clear consensus on.

Generally, however, the view of the caucus, just to reiterate, is that at a time when political institutions have been delegitimized through the passage of time and through recent Canadian political history, the PC caucus, the government caucus, sees referendums, when used in the proper context and with proper thresholds, as a way to re-legitimize the political process in general, and that this could provide an excellent way for parliamentarians who are still, shall we say, front and centre in terms of day-to-day management of parliamentary democracy in Ontario, an additional means of being representative and legitimate representatives of the people of Ontario.

With that background, they have directed the government members of this committee to press on ahead with referendum legislation.

The Chair: I'll turn now to the Liberal caucus. Do you have any comments relative to Mr Clement's introduction?

Mr Rick Bartolucci (Sudbury): We had an extensive discussion at caucus with regard to this item. It's the feeling of our caucus that in general we support the idea of referenda. However, we have some serious concerns with regard to signature threshold. We have serious concerns that there be no geographical threshold. We see that as being critical. We have some concern with regard to the responsibility for drafting the referenda question. We see an independent commission, from past experi-

ences of members of the opposition, as certainly being suspect, at best. We're concerned about the wording of referenda. We're concerned about the government's direction with regard to the formulation of passage, timing, voting mechanisms and how they're going to be implemented. We're concerned about the campaign regulations and the frequency of agendas.

Because of all the concerns we have we struck a committee of caucus to spend some additional time doing research, using the data we already have but also doing additional research, because we'd like to come up with a report that clearly shows that the general concept is not one we want to oppose. But we want to ensure that its usage is maximized to its full potential and for the reason we hope the government wants to institute referenda.

Anything else, Gilles?

Mr Gilles E. Morin (Carleton East): No, that's it.

Mr Tony Silipo (Dovercourt): Let me say, before outlining where I think my caucus is on this, that I appreciate Mr Clement's taking us through both the last meeting and today on where the government caucus is on the issues they have determined to date. It was certainly useful in our caucus discussion of at least one of the points he mentioned today, where there has been clarification and I think a bit of a change on where he had read the threshold to be. I think that's an important factor as well, which may have some impact on that aspect of the issue. I don't know. I don't want to prejudge my caucus on this, as you will see from my comments.

In terms of where we are on this, I have to tell you we had a fairly interesting discussion in our caucus and a sense that there needs to be further talk within caucus before coming up with firm and final positions on all these points, but I can tell you, from where we are at this point, that we have been, I think historically, and continue to be in favour of the general use of referenda, seeing them as a tool of democratic expression but one that we believe is best used on major issues of concern to the public and never to be seen as a replacement for the parliamentary process, which we certainly believe needs to continue to be there and strengthened in a number of ways.

We see that in certain key areas of public policy it may be wise to turn to referenda, but how and when that's determined we think should not be the subject of referenda. One of the points that we have a significant disagreement with the government caucus on in this is, and I think Mr Clement last time outlined constitutional issues and new taxes as being two areas, and saying that the government members feel that in those areas there should be a legislative requirement to hold referenda. We would disagree with that.

We think you should not legislate on what issues referenda should be held, that as they relate to the government side of the issue they are part of the judgement call that any government has to make if they feel that a certain issue is of such importance that it warrants a referendum, as did the last constitutional accord, as one key example. That's one issue where I can say categorically we would be opposed with respect to where the government is going.

With respect to the notion of citizen-initiated referenda, I can tell you that one has raised a lot of questions in our discussions. I think it's fair to say that at this point in time at least there is general opposition to that coming not from the notion of being against the use of referenda in that sense, but primarily because of a lot of concerns that it generates, and we talked about some of these the last time around, one of the major ones being the question of a small group of people being able to hijack the process in terms of generating discussion, starting a process. This is where I think the threshold question becomes key, so perhaps the move from 5% to 10% may have some impact on that. That's an issue I certainly would like to have further discussions on with my caucus, because I think the 10% is perhaps a more useful threshold if there were going to be such as thing as citizen-initiated referenda.

The other major issue, and I know we talked about this last time as well, in terms of the worry that we have around citizen-initiated referenda, is around the whole question of minority rights. I know Mr Clement outlined in his presentation last time ways in which he believes that could be addressed in terms of the need for legislation and the fact that legislation could not be passed, that it would be contrary to the charter.

I think there was some question in our minds about whether that's sufficient, and there were also some questions going beyond just the basic protections that are in the charter, which are obviously key ones, as to whether there are other aspects of minority rights that are not picked up in those protections that we would be concerned with.

That's another reason why we have some hesitation around this notion of citizen-initiated referenda, but as I say, it's something I would like to be able to continue to have some discussions with people on and look at whether the change in threshold has an impact on that.

1600

In terms of other major issues, we also would want to have some clarity and would have some concerns around the question of costs that any referenda would involve and therefore believe that's an issue that needs to be considered in this report and I think would have some impact upon what recommendations we make as to the timing and the frequency of referenda. As we heard in our deliberations, we are talking, even with permanent voters' lists, at millions of dollars every time a referendum is held, and I think that's an issue that needs to concern us as to how you balance that off against the expansion of rights that people are wanting to give citizens to be able to express themselves.

We also need to be clear in our minds about the notion of province-wide versus regional application of referenda. I'm not sure if I understood correctly Mr Clement's points on that in terms of how that would be dealt with in this. That's maybe just something we need some further clarification on.

Although, to be honest, we didn't get into a lot of discussion on this and this is something we also would need some further discussion on, there's the whole gamut of rules that would apply in referenda, going from whether there should be a commission separate and apart

from the elections commission to govern and apply the rules to all of the financing rules that would apply etc. Those are issues that we need to also be addressing as we deal with this.

The last point I would make is that we take the position that there are a number of concerns that were raised during both the hearings and discussion on this topic that we think need to be addressed. We don't presume they should be addressed in this report in an in-depth way, but I think we would be remiss if we didn't talk about all of the issues that had to do with political parliamentary reform that were flagged, because they too are tools, we believe, that go to the heart of the matter that, as we understand it, the thrust on referenda is trying to achieve, which is to increase participatory democracy.

More than one person who spoke to us, indeed even one or two government members, as I recall, talked about the usefulness of increasing the role of individual MPPs as one key step that could be taken in a far less expensive way than holding referenda to increase participatory democracy. We think in that context it's an issue that can't be omitted from this discussion. As I say, we don't presume that we could get in this report into an in-depth analysis of those, but at least a flagging that those are key issues that need to be addressed.

On a personal note, if I had my way, we would be talking about those as part of the other piece of legislation that another one of our committees is dealing with around the new electoral boundaries and the reduction of MPPs. But be that as it may, it remains an outstanding issue that not just I but my caucus feel needs to be addressed, that whole notion of how to improve the system along those lines.

That's essentially where we are at this point. You can see that on the basic notion, we're supportive. We have some concerns at this point that I would have to categorize as opposition to citizen-initiated referenda, although as I say, I think the question of the change of threshold that the government members are suggesting may have some impact on that, and a number of other issues that we would require some more discussion on.

The Chair: Mr Hastings, did you want to add something to this initial discussion?

Mr John Hastings (Etobicoke-Rexdale): There are two questions I'd like to ask whether our research officer could undertake. One is terms of all the aspects of protecting the rights of minorities in Ontario, whether any provincial governments have ever referenced a question to their supreme courts regarding this type of situation, like the feds have — I can't remember the issue where they posed a question to the Supreme Court of Canada. It eludes me what it was. It's only in the last two years. I'd like to know whether that would be possible, if there's been any specific reference of issues in or outside of the referenda context.

The second question I have is, what was the outcome of the feds — maybe this is the issue that was referenced to the Supreme Court — on maximum cost by third parties of advertising pro or con on an issue? I guess in terms of the 1992 Charlottetown question, it seems to me there was a question that arose that was referenced to the Supreme Court on that, because the National Citizens'

Coalition may have been one of the groups that were impacted one way or the other by spending; also, whether you could go after candidates in an election.

Those would be the two questions I would have as to whether we could get some guidance from the Ontario Supreme Court in terms of what they would see as the concerns we may have if we go with referenda legislation on enhancing and protecting minority rights, all the aspects of it, whether in fact a provincial government can do that. I don't know.

The Chair: We'll endeavour to get answers for you as soon as possible on those questions.

I'd indicated earlier in terms of the way we proceed from here. We may want to discuss that again very briefly in light of the fact that what I think I've heard is there's a certain amount of common ground between all three parties, but there are also some fairly substantial differences in opinion among the three parties. What I had suggested earlier was that we would go through Philip's framework point by point and have discussion on each point, but perhaps there may be a better way to do it from here on in. I'd ask our clerk, Lisa, to explain whatever options we might have and see how the committee members feel as to how we go from here. Lisa, if you would speak to this point.

Clerk of the Committee (Lisa Freedman): There are a number of options in terms of procedurally writing the report. The bottom line is it's up to the committee how they want to write the report. But generally when you're in a situation where there is some agreement but not total agreement, the committee does one of two things. Where there is agreement, you would see a line that, "The committee recommends that..." and that would be contained where the agreement is. Where there isn't agreement, one of two things can happen. Either the committee can say, "The committee has no recommendation here but wants to highlight the following points," or the following concerns, and if that's not acceptable to the committee, then ultimately someone would have to put forward a position that would be debatable that would contain the wishes of the committee. Ultimately, you need some committee report out of this.

Mr Clement: Could I just ask a question? When we have contrary opinions on the table, are they put to a vote? Is that how you decide what the majority or minority opinion is?

Clerk of the Committee: That's where one of two things has happened. In some committees, if there are contrary opinions on the table, they've decided not to go forward with a recommendation, but just to say, "The committee has no recommendation on this issue but had the following concerns," and it would outline the two sides. Ultimately, if you want one recommendation, someone's going to have to move a motion with a recommendation that would be adopted by the committee.

Mr Clement: That sounds a bit cumbersome to me. Obviously we have a whole framework of views on this particular topic, which is a big topic, and I would think it would be cumbersome for myself or my colleagues to move motions on each particular sentence of our point of view. Let me know if this is out of line, but I would prefer if we could go through Philip's report, question 1

being the first topic, or part 1. We can outline differing views on part 1 and then put those concepts as articulated — presumably there are at least two views on part 1 — to a vote of the committee. That's how you determine whether the body of language in favour of a particular point of view on part 1 or against it would be the majority or the minority. I'm not sure whether I'm articulating it properly, but do you see what I'm trying to say?

Clerk of the Committee: Yes, and procedurally, as long the committee knew what it was voting on, clearly had some question on the floor and knew what it was voting on, there wouldn't be a problem with that.

The Chair: It's going to be complicated.
1610

Clerk of the Committee: There is one other option that one committee did follow, and in terms of how procedurally correct it was, they decided to do it. They were in a similar situation where they were coming up with three different points of view, although there was some agreement, and the majority report of the committee simply said, "The report of the committee is contained in the following three appendices." There was an appendix from each party. So people could choose which one they wanted, and that was done on a pre-budget consultation because they could not agree.

Mr Clement: It's kind of wishy-washy. I think it is possible to crystallize — I'm just looking at part 1 now — the scope of referendum legislation. I can crystallize that in a motion, but I wouldn't want it just to be a standalone motion as part of the report; I'd like some reasoning both pro and con so that those who are against my particular articulation of how to deal with part 1 also have in the minority report — or the majority report, depending on how the vote goes — their point of view articulated as well. We can crystallize it in motions as long as there are opinions that are also part of the body of the report.

The Chair: It's getting to be very complicated. Mr Wildman is next, and then Mr Morin.

Mr Bill Grimmatt (Muskoka-Georgian Bay): Father Wildman.

Mr Bud Wildman (Algoma): No, there's no white collar there.

Mr Ron Johnson (Brantford): He meant that you're old enough to be his father.

Mr Wildman: That may be. I don't know.

I just was going to point out that normally, in trying to arrive at a report to the assembly, the practice is that we attempt to come up with a consensus wording, and it's only when it becomes obvious that a consensus is not possible that you end up in a situation where there may be minority reports and you end up having to vote one way or the other. If the minority then has lost, the option is open to the minority to submit a minority report or not. That means somehow coming up with wording for answers to these questions which we can talk about, to which we can say, "Yes, we can agree with this" or "No, we suggest some wording changes; is that acceptable?" and so on, and go back and forth until we get some kind of consensus or it becomes obvious that a consensus is not possible. That means we have to at some point either

have the researcher prepare proposed answers or the three cauci —

Interjection: "Cauci"?

Mr Wildman: — produce proposed wording and then see if there are areas where they are in agreement.

The Chair: Thank you for that contribution.

Mr Morin: I'll tell you what I feel. In writing a report such as this, it is extremely important that it's well thought out, well balanced, that all of us agree on many things. I feel we're rushing into it, honestly. I've talked to my own party. Quite a few of my own members are possibly not informed enough of what referenda are all about and also what they are going to do in the future.

I would recommend that we give it some more thought, that we give more time for our own members to look into that, because there could be some very serious repercussions on what we're about to introduce. I'm not trying to delay things. I'm just trying to say: Stop. Think. Let's know for sure where we're going. Let's know for sure what we plan to bring, what we plan to implement, because what we're preparing now is a document that will serve many other governments if it's well prepared. But let me tell you that if it's not well done, we're going to pay the price for it.

That's what I suggest: that we give more time to this report, that we go back to our own members and let them know what the implications are, because let me assure you that if it's not well done and that tool is given in the wrong hands, a lot of damage can be done. That is not our function as members. I think as members our responsibility is to make sure that we have harmony, make sure that we can communicate well with the citizens, that we know what we are getting involved in. This is what I feel. I feel that we are going too fast and it's too important an issue just to rush at it and give an opinion which is not well-thought-out or well planned.

Mr Clement: I am always sensitive to Mr Morin's concerns because he's an individual who thinks out his position time and again, so I am cognizant of his concerns. I would have to say, though, on the issue of referenda, that really referenda have been with us in this jurisdiction and in this country for decades upon decades. This is not — how should I say it? — a revolutionary concept here. It's something we have been dealing with as a society for a number of decades.

I see this report as merely the next iteration, the next evolutionary change on something that has been with our parliamentary democracy for a great number of years in a number of contexts. The researcher's report that was with us at the last meeting on provincial referenda and frequency and so on illustrates the history. I am hoping we will keep that in mind, that this is not something as top-of-the-head as perhaps has been expressed.

I believe we have an obligation to report. The Premier's office, on behalf of the government, released *Your Ontario, Your Choice* in August of this year. We then subsequently held very interesting hearings where I think all of us came to the table with completely open minds in terms of how we wanted to structure the issue. I don't mean to speak for my colleagues, but I think all of us came here really almost with a tabula rasa of what

could be accomplished by this committee upon hearing some of the deputations.

When Mr Morin indicated at a subcommittee that perhaps we needed a bit more time to hear from some more deputations, we were quite willing to do so. They were very interesting deputations, I must say, that added to the process. So we've been quite open to a full and fulsome discussion at the table here.

I do, however, feel an obligation to report. When we discussed it with our caucus, I think they are now looking to the government members here to articulate their vision of an acceptable referenda policy for the province of Ontario. If we merely said that the time is not ripe or we need more discussion, I don't think on our side we would be discharging our responsibilities responsibly. I am hoping that through the discussion that we are about to proceed upon, we can come to some conclusions which are well-thought-out — that goes without saying — but then will allow us to report to the government so that the government has the advantage of our knowledge and our conclusions prior to acting. I think that's what it's all about.

Mr Hastings: Trying to be sensitive to M. Morin's concerns, I am wondering, given that we do want to proceed, but not in haste, in a well-thought-out, comprehensive strategy and legislation for this important measure, whether it might be possible that we could, out of your own caucus, get a consensus on one or two or three items that you could comment on earlier, and the ones that are the stickiest for all of us, whatever they are, threshold or minority rights, could be reported on within 60 days or 90 days in terms of what are all the problems there. That might be one way of organizing a report.

If that's not a possibility, perhaps we're going to end up with a majority report on maybe one issue we agree on, generally speaking, or two; I don't know what the number might be. Where there is no consensus, you'd end up with a minority report. I guess that's the way other items have been handled before out of other committees on an organizational basis when you can't get a majority; you don't agree with every crossed t and dotted i on the thing. When I say "majority" or "agreement," you're getting agreement in principle maybe on one or two of the things in that item.

Those are suggestions I throw out to accommodate what you're doing in terms of your report and where Mr Clement and the committee want to go in terms of introducing legislation in the next — I don't know what sort of time frame we're looking at — six months or nine months, somewhere in there.

1620

Mr Wildman: I understand your attempt to resolve the problem, but I think the initial question is obviously the crucial one. If you use the example that you mentioned, minority rights, which may be problematic, the second part of the first question may be related to that. So that then affects the overall report, I would think, or your position on the overall report. You can't really segregate that and deal with that later and deal with questions about the mechanics and those kinds of things separately. If we have a consensus on the first question, we can move forward. If we don't have a consensus on the first

question, then obviously we could have some serious difficulties.

You could say, "Should there be legislation authorizing the holding of provincial referenda?" and I think perhaps many of us could say yes, but then it says, "and if so, on what subjects should referenda be permitted?" I suspect that will be the crucial question. I guess it's been posited that we could have referenda on constitutional matters, on tax matters, on issues and things like that, but constitutional matters may in fact impinge on minority rights. I know there's been discussion before the committee both by members of the committee and witnesses about the need to ensure that any question proposed would be in line with the Charter of Rights and Freedoms; otherwise there could be a conclusion which would be found to be *ultra vires* by the courts.

That's where we get into the arguments, I think. I'm not sure at this point, but I think we may have some problems. I recall the presentation made by OEETA, for instance, where they raised serious concerns with regard to the Catholic minority, and in doing so they also talked about the francophone minority, aboriginals and racial minorities and so on. They argued that leaving the matter to after the fact — in other words, you could have a referendum campaign on the denial of rights for some or all of these groups which might then proceed and subsequently be found to be *ultra vires* and therefore would not be valid. Their argument was that the process itself could be harmful to the minority and harmful to society in general. That's an interesting and difficult question. The question is, how do we resolve that?

It's been suggested that perhaps one of the ways to deal with this kind of issue is that you might have a commission of some sort or a panel of learned people who would look at a proposed question and say, "If this goes to court, it would likely not be upheld; therefore it should not proceed," and you could cut it off very early. Those are the kinds of issues that we have to consider, because frankly — I can't remember, was it the Canadian Jewish Congress that also made a presentation somewhat along similar lines as well, where they raised questions about this? I really think that is something that can't be easily segregated out and dealt with separately. Somehow we've got to deal with the first question, which is really two questions, to be able to determine whether or not we're going to be able to proceed on a consensus basis.

The Chair: That makes good sense.

Mr Bartolucci: A suggestion we might have in order to maximize time and to manage time very effectively is to try to divide this into sections and bring it back to our caucuses and deal with it on an individual basis, because obviously we have a committee set up. You people want more discussion. I would suggest that might be the best way to maximize our use of time. We can stay here and talk for a long time, but maybe if we go back to our caucuses — I think number 1 is critical, because number 1 dictates the entire tone that this discussion is going to take. I would like to reach consensus on this, but I would suggest we have to clearly outline what each caucus's parameters are with regard to what subjects referenda should be permitted on. I believe once we've established that, then everything can flow.

I would suggest maybe, if we wanted to deal with our caucus, questions 1 and 2 — I think question 1 is a standalone question. I think it's important enough to get input from our caucus on before we come back. If we can come back and try to meet some type of consensus, then obviously I think sections 2, 3, 4, 5, 6 and 7 will move along much more smoothly.

Mr Silipo: I'd just add that I understand what Mr Clement is saying on behalf of government members, his sense of wanting to get on now with coming to some conclusions. I understand that. I just want to say very genuinely that any hesitation I have in proceeding to come to some firm, fast decisions at this point has nothing to do with trying to slow down that process. I really do think on this one it would be useful to try to see how much consensus we could reach. I wonder if there is a way to try to bridge, then, the concern that Mr Clement and the government members have for us getting on with coming to some conclusions with also some useful time frame.

I can tell you, for example, that coming here after one discussion in caucus that I've had, I feel the yardsticks have moved pretty significantly. The rest of my caucus members are now more tuned into this issue than they would have been, and that's simply because in the day-to-day activities we all focus on different things, as our relative responsibilities indicate us to. I know that one or two more discussions there would most likely put me in a position where I could — I know for sure I would be able to come here with greater clarity about where we are, but my sense is that there might also be a closer consensus on some of the key issues.

As I indicated earlier, there's probably at least the one area where we will not agree in terms of mandating referendum in certain areas, but then it becomes easier to sort out. If it's one or two even key issues where we disagree, there may still be a whole bunch of issues on which we do agree, and I think it would be important on something like this to proceed with as much consensus as possible. That's my own personal sense. I don't know if there's a way — maybe I could just put it to Mr Clement, particularly given that he's next on the list — that we can both afford that time for more discussion, which I think will be useful, as I say, in a way that also reflects his concern for the committee moving as quickly as possible to the next stage. Maybe that's what we should focus our attention on.

The Chair: It's also, I think, the responsibility of the Chair to some extent to move forward with the business of the committee.

1630

Mr Clement: I want to thank the members for their comments on this, particularly Mr Wildman. It reminds me of attending the fights, and a hockey game broke out. We were having a discussion about procedure, and substance reared its head. I think that'll be very helpful to us once we get into the substance, because I think we're going to find that when we have the dialogue — I'm intrigued, and I know my colleague Mr Hastings was intrigued, by some sort of reference procedure or some sort of vetting procedure that will ensure that the legitimate rights — group rights and individual rights — of

society's citizens are not contravened before you even get to the signature-gathering stage of a citizens' petition, for instance. Things like that could be very useful procedural recommendations to the government. So I'm quite anxious, as you can tell from my body language, to move on to discuss the substance, because I think we can get a lot of consensus on that.

Mr Wildman: I wouldn't consider your language bawdy.

Mr Clement: Not bawdy, no.

I'm also sensitive to the concerns of the other members: Mr Bartolucci, Mr Silipo, Mr Morin. If their advice to me, on good-faith advice, is that an extra week of an opportunity to get some more discussion is what it takes to move us ahead with alacrity, I'm certainly willing to accede to the week. Quite frankly, a week would probably help us on this side too. I think we're all trying to be reasonable here, as long as we're all trying to work towards a substantive discussion. We can have a referendum on it.

Mr John O'Toole (Durham East): Sure. Let's have a referendum on it.

Mr Clement: I would be concerned, Mr Chair — and I'm quite cognizant of your admonition as well that we have to get on with the process. I think over a week is stretching it, given the amount of time we've talked about going back to our caucuses to discuss these issues. I think this is the third time we've discussed this in session. I think the three strikes are there and I'd like to move on after that point, but I'm willing to accede to starting this discussion afresh next week. It's the Chair's decision, of course.

Mr Wildman: We would at least have more clarity as to whether or not we would be able to proceed on a consensus basis or whether we'd be looking at a minority report. I think we would certainly have that, I hope.

The Chair: Mr Bartolucci, did you want to speak to this?

Mr Bartolucci: If we do that, then we are obviously zeroing in on item number 1 to bring back to this committee, because that's going to be the biggest bone of contention in all of this. If we get further in our own caucuses, that's fine, but we consider our individual definitions to be key to the whole process.

Mr Clement: Could I just say for the record — again, I'm rearing into substance here for a second — that item 1 is inextricably linked to signature thresholds, to the time limits for petitions, to the responsibility for drafting referendum questions and to campaign regulation. So there are linkages here between this item and further items in terms of how you manage the referendum process. I don't think anyone on the government side is saying that the referendum process will not be managed; it has to be managed for the benefit of all Ontarians. As long as you keep that in mind, I think we can proceed beyond one and create some checks and balances here, just as we have in our parliamentary process.

Mr Bartolucci: That's fair.

Mr Wildman: That's why I was basically saying I didn't know whether we could segregate it out.

The Chair: Mr O'Toole, do you want to add something?

Mr O'Toole: I listened very carefully last week and this week. I'm wondering, can we get consensus here? Number one, it's a little inclusive, but is there a consensus here that referendums are supported by all three parties — that simplifies it — and then the process that follows that? Is there a consensus here even now that we're saying we're going to work out what the issues are and the other substantive parts of time limits, thresholds, signatures?

The Chair: I think we heard at the outset members from all parties indicate support for the concept of referenda on certain issues.

Mr O'Toole: That's a clear statement to start.

Mr Clement: No, that's the second part of it.

Mr O'Toole: The second part of number one is problematic, but once you've agreed that you are supportive, could we not set about coming back with specific responses to those things like time limit, like threshold? I think Mr Clement has circulated, certainly in our caucus — he's tried to actually get a number. Was it 10%? That kind of stuff, I think, would be productive, because most of what we're doing here is philosophizing around a lot of the process stuff, but I think we're all united that there should be referenda. So could we come back that way if we're going to use the week productively?

Mr Hastings: I'd like to go back to the question of finding out whether, while this is going on, our research officer could see if there's any history of referencing a question that's constitutional like this — protection of minority rights — and come up with some background on that. Then we would have an answer or no answer as to that, whether that's even viable in terms of the protection of minority rights. If there's one thing I've learned out of these sessions it's the concern of the Catholic, francophone and aboriginal communities with respect to that.

Even if there is no history, I'd be curious to see how your caucuses — it's never been talked about in ours —

find that, whether you see the Supreme Court of Ontario looking at that. Do you want to have the courts involved in a political question? Because you don't have the legislation in place, you're advancing something before you've done it. I don't know.

Mr Wildman: There is precedent for references to be made to a court and saying, "What is your opinion on this?" on the legality; not on the politics of it, but on the constitutionality of it. That may be a good way to go.

Mr Hastings: I'd like to see if we can get some answers on those questions in the next while, while we're doing this other stuff.

The Chair: Duly noted. We'll endeavour to get back to you on that as well. All right, any further discussion?

As Chair, I would again say I feel it is my responsibility to work with committee members to try to keep things moving forward, but I've heard consensus opinion from all three parties now that each caucus needs a little more time and one more week to discuss this with their respective caucuses. Of course, we all understand our responsibility as committee members. We've participated in the public hearings. We've had the opportunity that some of our caucus colleagues have not to look at this issue in greater depth, while we recognize that as delegates from our respective caucuses, we need the support of our respective caucuses, I suppose, before we move forward.

This gives us another week too, I guess, to work with our researcher to provide perhaps a slightly more detailed discussion paper that we can use as a frame of reference for our further discussions. We've also heard that each party is supportive, in principle, of the concept of referenda, so that's something positive we've accomplished today.

In conclusion, I would now recess this meeting. We will meet again next week on Wednesday, December 4. The committee is adjourned.

The committee adjourned at 1638.

CONTENTS

Wednesday 27 November 1996

Referenda M-385

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)

*Mr Rick Bartolucci (Sudbury L)

*Mr Dave Boushy (Sarnia PC)

*Mr Tony Clement (Brampton South / -Sud PC)

Mr Carl Defaria (Mississauga East / -Est PC)

*Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ron Johnson (Brantford PC)

*Mr Frank Miclash (Kenora L)

*Mr Gilles E. Morin (Carleton East / -Est L)

*Mr John R. O'Toole (Durham East / -Est PC)

*Mr Tony Silipo (Dovercourt ND)

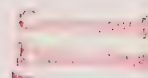
*Mr R. Gary Stewart (Peterborough PC)

*Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service



M-25

M-25

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 4 December 1996

Journal des débats (Hansard)

Mercredi 4 décembre 1996

Standing committee on
the Legislative Assembly

Comité permanent de
l'Assemblée législative

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Wednesday 4 December 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Mercredi 4 décembre 1996

The committee met at 1537 in room 228.

REFERENDA

The Chair (Mr Ted Arnott): We are resuming our discussions and are actually in the process, hopefully, of writing our report to the Legislature on the issue of referenda.

All members of the committee have in front of them two documents that Philip Kaye, our research officer, has prepared. One is answers to questions that were raised at the last committee meeting and the second is Issues and Options re: the Committee's Report on Referenda, which is the framework paper to the discussion that we're going to attempt to engage in this afternoon, again working towards giving Philip the direction he needs to write the report for this committee.

I would turn now to Philip and ask him to give a brief overview of what this paper's all about.

Mr Philip Kaye: As members are aware, a few weeks ago I prepared a framework document highlighting various issues the committee may wish to consider when giving instructions for the drafting of the report on referenda. That document contained about three pages of questions for the committee to consider.

In the document that members have before them entitled Issues and Options re: the Committee's Report on Referenda, I have taken those three pages or so of questions and incorporated them in another paper which contains much more detail. This more detailed paper contains almost all of the questions in that previous memo with a few changes which I've noted at the bottom of page 1.

The first change I wish to bring to members' attention deals with the concept and scope of referendum legislation. Previously, the framework memo under item 1 asked two things: "Should there be legislation authorizing the holding of provincial referenda, and if so, on what subjects should referenda be permitted?" I've divided that question into two parts so that the first part remains under the current question 1: "Should there be legislation authorizing the holding of provincial referenda?" But the second part of the old question 1 dealing with the subjects of referenda is removed from the question because the issue of subject matter is raised in subsequent questions, in particular questions 4, 7 and 9, and those questions deal with discretionary referenda, mandatory referenda and citizens' initiatives, because in looking at those kinds of referenda it's necessary to ask what subjects should they or could they deal with. So that's the first change between this paper and the previous one.

A second change I've noted has to do with the issue of recall, which I've moved from the category of citizens' initiatives to political and electoral reform. You will notice that a question on recall is now found in question 33 on page 15.

Two other changes involve the addition of questions as a result of comments made during the last two committee meetings and a further review of the summary of the recommendations made to the committee. Those additional questions pertain to the cost of referenda and the issue of ensuring the constitutionality of the ballot questions.

This more detailed document is intended to be read with the summary of the recommendations made to the committee, and under the various questions you'll notice "see" references to the relevant pages of the summary.

To assist the committee in its deliberations, I've highlighted the questions. Not only have I numbered them, I've put them in boxes with shading, and following the questions, in addition to the "see" references, I list various options for the committee to consider.

If the question simply asks for a yes or no answer, there's nothing provided under options, but if more is required, then members will notice that a series of options is listed. The options are not meant to be exhaustive, so members of course are free to suggest other alternatives.

Similarly to the framework document, this paper, unless it otherwise says, uses the word "referenda" in a very broad sense to cover binding votes, non-binding votes and also citizens' initiatives. The question of whatever way the referendum was initiated is not an issue, so the term is used in a very general sense.

I think that basically gives an overview of the structure of the paper with, as I said, options listed under some of the more significant questions.

The Chair: Thanks, Philip. Does anybody have any questions of clarification on this paper? Does every member of the committee have a copy of this Revised Summary of Recommendations re: Submissions on Referenda? Lisa's handed that out for everybody. You may need it to follow along.

What I intend to do is to proceed going through this paper that Philip has provided and have a discussion on each point. I'll read out the question that he's raised, and members will have an opportunity —

Mr Tony Clement (Brampton South): There's a second memorandum dated December 4 regarding court references. Is that worthy of comment by the researcher?

The Chair: Do you have questions about that? It was in response to some of the verbal questions that were

raised at last week's meeting. Philip, do you want to explain?

Mr Clement: Maybe you could give us the Reader's Digest version of it, because we won't have time to read it.

Mr Kaye: There were two questions raised at the committee's last meeting. The first one asked: Have provinces ever referred issues of minority rights to their supreme courts? Beginning on page 2, I note that several provinces indeed have referred issues of minority rights to their courts, particularly with respect to French language education rights. Currently in Ontario the power of the provincial government to refer matters to the courts is found in the Courts of Justice Act which contains a provision that reads, "The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration."

The other issue that was raised last week was whether or not there had been a court case involving limits on third-party advertising, and the Charlottetown accord where the National Citizens' Coalition may have been a party. I wasn't able to locate a case involving all those factors, but there were two cases which involved some of them.

The first one is noted at the bottom of page 3. It's a case pertaining to the Canada Elections Act, where the restrictions on third-party advertising were in issue, and that restriction is mentioned at the top of page 4. There were various provisions challenged in this court case, which was launched by David Somerville on behalf of the National Citizens' Coalition as well as on his own behalf. The restrictions in the Canada Elections Act which he challenged prohibited all advertising in relation to an election during a specified blackout period. They also restricted third parties, namely, all persons other than political parties and candidates, from spending more than \$1,000 on advertising which promoted or opposed a particular party or candidate.

The Alberta Court of Appeal in June 1996 dismissed an appeal from the decision of the trial judge which had ruled that these provisions were contrary to the Charter of Rights. The Alberta Court of Appeal held that each of the restrictions violated the guarantees of freedom of expression and freedom of association in the Charter of Rights. In addition, the court held that the restrictions on third-party advertising obstructed citizens' access to information to such an extent that the right to cast an informed vote under section 3 of the charter was violated.

The other case highlighted in the memorandum involves Quebec's referendum legislation. Robert Libman, former leader of Quebec's Equality Party, has launched a court challenge against sections in Quebec's referendum legislation dealing with regulated expenses. The provisions in question state that during a referendum only a national Yes or No committee may incur or authorize expenses to promote one side or another. During the referendum on the Charlottetown accord in 1992, Libman wished to run his own campaign rather than campaign under the leadership of the official Yes and No committees. This action against some provisions in Quebec's referendum legislation went before two levels of court in Quebec and is now before the Supreme Court of Canada.

Just a few weeks ago the Supreme Court issued formally the two questions which it would decide upon. They are summarized at the top of page 5, the first one being, do certain provisions on the regulation of referendum expenses in Quebec violate in whole or in part section 2(b), dealing with freedom of expression, and/or section 2(d), dealing with freedom of association in the Charter of Rights; and secondly, if they do, do these provisions or any of them constitute a reasonable limit prescribed by law under the charter? in which case they would be upheld.

The federal government decided within the past week or so not to intervene in this case before the Supreme Court of Canada. There's a quote from Justice Minister Allan Rock in footnote 12 at the bottom of page 4 of the memorandum, where he's quoted as saying, "We didn't think there was anything we could add, so we're not going to take part."

The Chair: Thank you, Philip.

Mr Jerry J. Ouellette (Oshawa): In regard to the verification of signatures to ensure that they are voters and that there's not duplication of signatures from various locations that occur with the petitions that come forward, is there anything to be discussed in that matter?

Mr Kaye: There isn't any specific question on verification because I've tried to keep this paper to the more general issues, but that's certainly an issue the committee may wish to provide guidance to me on in drafting the report.

1550

The Chair: Let's see if we can get started. The first question that Philip has posed, on the first page, is, "Should there be legislation authorizing the holding of provincial referenda?" Discussion?

Mr Gilles E. Morin (Carleton East): If you'll recall, at the last meeting we had, in November, we had asked for a delay so that we could consult our caucus, which we did. We had a lengthy discussion and there was a lot of participation, which really pleased me, because quite a few members, in my opinion, at that time had not gone far enough.

The position we want to take is that we agree in principle with the referendum except that in order to proceed and to debate it further, we would ask the following: If we are to hold referenda, we should organize a tripartite committee — and that committee, of course, would be formed by all of us — and it has to be, when it comes the time to make a decision, a unanimous decision. There's no choice other than to have a unanimous decision. If it doesn't work that way, if it's not acceptable, we'll submit our own report.

I'd like to put a motion immediately, if you're agreeable to that — and maybe you could phrase it, Lisa, for us — that a tripartite committee should be formed — I think you understand my question — and that whenever a decision is made to hold a referendum it should be unanimous. It should not be left to the government to decide if a referendum should be held on a certain issue but the decision should be made by the three parties. We can only operate on that. We're willing to go ahead and hold discussion as long as you agree with that.

The Chair: Mr Morin has made a motion and Lisa's furiously writing it down here. Discussion on the motion?

Mr John O'Toole (Durham East): Mr Morin, is your recommendation with respect to this process or once we've agreed that a referendum is a valid process? We're going through a series of defining "referendum" and the process. Is your resolution respecting, once we've made that decision, what would the subject and conditions be any time there was to be a referendum?

Mr Morin: The agreement with my caucus is that if we are to proceed on discussions, submitting a report on referenda, a committee should be formed and that whatever discussion is held on referendum is done by the three parties and it's got to be unanimous. Is that clear?

Mr O'Toole: So it's the whole process?

Mr Morin: Let us say a decision is made to call a referendum on closing hospitals or raising taxes. It is a three-party committee that will decide. I hope I make myself clear.

Mr O'Toole: Let me just rephrase my question. I feel that what we're doing here is determining what are the issues that could be brought in a referendum, whether right of recall, all those other subsequent — right now, we don't have a referendum process.

Mr Morin: I agree.

Mr O'Toole: What you're talking about to me is not allowing this very discussion to take place.

Mr Morin: Until such time as my motion is accepted. If it's not accepted, then we will proceed with our own report ourselves.

Mr O'Toole: Okay, thank you.

Mr Clement: I'm just trying to get some clarification on the Liberal position on this issue. None of the deputations we had listened to had suggested a format similar to the one that has been expressed by Mr Morin, so I just need a bit of clarification on what exactly this means. Does this mean that there would be no mandated referendum issues, that any referendum issue, before it ever got to a referendum, had to go through this process? Is that the intention?

Mr Morin: The tripartite committee, correct. It's got to be unanimous.

Mr Clement: I see. Does that mean also that there would be no citizen-initiated referendum through a collection of signatures or petitions that would be available to citizens unless it also was agreed to by a tripartite —

Mr Morin: If the tripartite committee decides that a referendum should be held, then of course the citizens would be consulted. In other words, what I'm saying is that one of the difficulties we've encountered is that if you need 10% of the population to agree that a referendum should be held, if you go, for instance, to northern Ontario it's a totally different story. You don't have the representation there. What we're afraid of is that you may limit it only to certain sectors of the province, and we don't agree with that. With a tripartite committee, in other words, the committee decides if it's unanimous consent to hold a referendum. It's the committee that decides to do it, and the committee in reality is representatives of the Legislature, but it should be held by the committee.

Mr Clement: Just one further question. I'm just trying to think this through so that I understand the position precisely. We were talking at our last meeting a week ago, throwing some ideas out. One of the ideas on the table, and I believe it was expressed in some of the deputations to this committee, was that there would be, either through the court system or through some form of independent commission, an opportunity for a 100% non-government-controlled entity which would ensure the question in a referendum to be valid, fair and balanced, and to ensure perhaps that the course of conduct within the referendum meets the principles of a modern democracy. That would be the stage at which there would be, I suppose, a check and a balance on unrestricted governmental fiat in this particular area. But you're not talking about that. You're saying that even before we get to that stage there would have to be a tripartite, as you call it, committee that would be deciding yes or no in terms of a referendum going forward?

Mr Morin: Yes, that's it.

Mr John Hastings (Etobicoke-Rexdale): Mr Morin, do you think that we'd have some terms of reference for this proposed tripartite committee that you're laying out? Would it mean there had to be total unanimity on any item of what would be the subject of a referendum or the financing or the whole beeswax, so to speak?

Mr Morin: That's correct. In other words, a referendum would not be held if you didn't have unanimous consent from the three parties. That's what I'm saying.

Mr Hastings: On anything?

Mr Morin: On anything.

Mr Hastings: I find that absolutely intriguing. Do you have any models from other places in the world where that type of —

Mr Morin: No, I don't. Ontario could be unique in that sense. We find that it is a very important tool to use. If it is agreed by the three parties, then we go ahead and we have a referendum on whatever the issue is.

Mr Hastings: So you have no other model? It's just something that you've come up with?

Mr Morin: No, but we could create one if there is none.

1600

Mr Tony Silipo (Dovercourt): I don't know if this will help or not, Mr Chair, but if we're speaking to the motion that Mr Morin has put forward, I would have to say, with all due respect, that I would disagree with it. There is certainly a lot of merit to questions being put to referenda having the agreement of however many parties are represented in the Legislature at any given point in time, in terms of the process and in terms indeed of the wording. That would be very wise, and when we get to the point of discussing how that should be done, I will certainly want to make some points emphasizing that even in cases where the government brings in a proposal for referenda there should be a process for discussion and approval by the Legislature prior to that happening.

I hope that will meet with the direction the government members want to go in, because I think it will be useful to air out potential problems that there might be with the suggested question, wording etc. In that context, even the kind of suggestion Mr Morin is making around poten-

tially an all-party group to be set up to try to flesh out those reasons, the wording and the structure etc would be very useful, but I have a fundamental disagreement with saying that no question could be put to a referendum unless all parties were to agree to it. I just think that's contrary to the process of accountability of the government to the Legislature. Whoever the government is at any given point in time, if they wish to put a question to referendum, they have the right to do that and they're accountable to the public and the Legislature for the basis upon which they make that decision and why they go about doing that.

Secondly, the other problem I have, as I indicated last week, is that one of the reasons we wanted to have some additional time was to go back and discuss the one major area where we had some initial discussion, and that was around the question of citizen-initiated referenda. I indicated last week that I appreciated very much the movement that I saw on the government side in terms of the threshold. I'm in a position where I can tell you that with certain caveats, which I will get into when we get to that point of the discussion, we see a way of structuring a process that would enable citizen-initiated referenda to also be part of this process.

The other reason I have trouble with the motion that is being suggested is that it sounds to me like it would limit that except where the three or however many parties were present in the Legislature would agree, and I'm not sure that's a wise way to go. In total, I find myself in disagreement with my Liberal colleagues on this point. That's where I am.

Mr Ouellette: I understand quite possibly the reasons something like this could be brought forward, in that when you have a concentration of a large population in an area it could dictate what takes place in the other parts of the province. I believe that may be the reason the member could be bringing it forward, but if we look at possibly bringing regional aspects to a referendum to make sure that it's all-encompassing, we may be able to address that issue.

Also, the motion as brought forward only deals with three parties. We have an independent, and who is to say that in the future that may not expand. How are their views to be dealt with on the issue as well?

Mr Hastings: Let's go back to Mr Morin's proposal. You state that the official opposition is in favour of some sort of referenda in principle. If that's so, then and if, as a member of a tripartite committee, the government proposed some form of referenda legislation and we couldn't agree at that point in time as to whether there ought to even be some referenda legislation, whatever the items you'd have in it, which is another whole set of considerations, are you saying then that in effect, if you didn't agree with the proposed bill, just the concept of the bill, that would end it, that if one member of that tripartite committee said no, the government then wouldn't even be able to proceed with the introduction of a bill?

Mr Morin: It's very difficult to speculate and create a scenario unless you know the situation or you understand the problem that is presented to you. I can see an occasion, for instance, where it's a national crisis, where

it's an issue that concerns all Ontarians, where the referendum, the wording, should be organized by the three parties. That's what I'm saying. It's a very serious tool to use. It's an important way to consult the public, and that's why you've got to be sure that it's done properly, that you have unanimous consent and that it's not used frivolously.

That's one of our main concerns, because we've seen examples of what happened in the province of Quebec. We've seen how the wording was done. Had it been done by the two parties in existence in Quebec, I'm quite sure that the question would have been totally different than what was asked, because obviously the question was very slanted and a lot of people didn't understand it. It was unfortunate. That's the type of issue, in my opinion, that really can confuse the public. That's why it's so frightening. Improperly used, you could do anything with that.

Let me give you an example. Let us say, for instance, that the government decides that we cannot push a certain bill, as you said, and the bill in the House is not accepted. Let's go to the public. It gives you a chance to determine, by politicizing, by contacting the people you have good relations with — they say, "Oh, yes, we want that." The minority has not been consulted because the question is worded in such a way that they don't understand it.

I'm not saying this in a derogatory way, because there are people who have total apathy towards whatever happens in government. This is why I feel that it is the responsibility of the three parties to phrase it in such a way that it will be well understood by everyone.

I think this request is very noble in the sense that whenever a referendum is to be called, we all participate, because we all have the same responsibility to make sure that we serve our citizens well, that we inform them well and that we don't take advantage of them. That is one explanation of it, and that's the issue I would like to debate.

Mr Hastings: Could I go back again and revisit my original question? I listened very carefully to what you said, M. Morin, and I infer — I may infer incorrectly — the assumption that if there were a tripartite committee established to deal with referenda and the first question on the agenda of that committee was to look at the concept or the possibility of having a referenda bill — whatever is in it; we haven't even got to that point yet — would you think that the whole idea of the proposal could be decimated right there if one of the members of that committee said, "No, we do not agree that there should even be a referenda bill, whatever the content of the bill or whatever the title of the bill," and that would, in essence, end the debate on this thing? In effect, we would be giving you a veto.

What I'm trying to find out is, in effect, not the contents, the thresholds, all those items that have to be vigorously debated, but the concept even. Do you believe that the concept of referenda legislation or a bill, however you name it, would be one of the items on that agenda of a first meeting of a tripartite committee, and if one of the members of that committee said, "No way, we don't like this," that would be the end of the whole thing?

Mr Morin: Start again and ask another question. The Constitution is a good example of that, when some provinces, smaller than any others, decided not to favour whatever was proposed.

Let me rephrase that so that you understand really what our feeling is on that issue. A referendum is so serious, so important, that whenever the government or the Legislature reaches a point where it can no longer proceed unless it consults the public — not to an election; to a referendum — you sit together and you say, “Look, that is the question we want to ask, because we are stalled, we don’t know how to proceed and we want to know what the public is thinking,” that would be an approach, but you could create all kinds of scenarios, Mr Hastings.

Mr Hastings: The only scenario I’m creating is whether, at the very start, if we accepted a tripartite committee with that veto proposition in it, would not the rejection of any concept of a referenda bill be the end of the debate on the thing? Whoever that might be, whatever party, that’s the end of it, because all you’ve said at the start is that the Liberal opposition agrees in principle that there ought to be a tripartite committee but we’ve got no further than that in terms of even the start of the ball game rules, let alone what the rules will be.

1610

Mr Morin: Once we’ve established, as you agree, with unanimous consent, then we can proceed and fix it in such a way that the model works. It’s as simple as that. There are certain things that we know we don’t agree with or we could improve, and we all do that together. That’s what I’m saying.

Mr Clement: Can I ask a procedural question, Mr Chair?

The Chair: Mr Clement, I’ve got a couple more speakers ahead of you. Is it germane to this exact point?

Mr Clement: It is. In terms of how we proceed, if a party at the table right here, right now, operates in good faith and attempts to participate in this process and then at some point down the line there comes an issue which they cannot in all good conscience abide by, can they then opt out of all of the things they opted into before we got to that particular item and that particular issue? Is that available to them? That is to say, because they’ve signed off on questions A, B and C of the report, thinking that it was going to go in this direction but in fact the committee goes in another direction, then they can say, “We’re going to write a minority report at this point, and although we said yes to A, B and C, it was conditional upon D going the way that we thought it would go, but it hasn’t, so we can then write a report on our own.” Is that fair?

The Chair: I would say, in answer to that, the majority of the committee can write whatever they want; the opposition parties can add as an appendix a minority dissenting opinion on whatever they want.

Mr Clement: The reason I asked the question is because we are going to be talking about, presumably, some of the issues that were raised by some of the deputants. An independent commission would be a check and a balance on the government of the day and on the process that we are trying to construct here. But it may

or it may not be that this independent commission may or may not satisfy my Liberal friends. But perhaps they want to participate in getting through some of the preliminary questions before we get to that and then decide whether they’re in or out. I’m just holding open that possibility. I don’t want you to feel that you’re out of the process in terms of a majority report when in fact it might be a reasonable report that you might want to sign your name to. Have I made myself clear?

The Chair: I think I understand what you’re getting at, Mr Clement. I would say to the Liberal members, if this motion does not pass, we would certainly welcome their participation as we go through writing the report, if they see fit to continue to participate.

Mrs Sandra Pupatello (Windsor-Sandwich): I think it’s clear from the outset that if we outline what the terms of reference are for the future of referenda in Ontario, what we need to ensure is that the subject matter therefore is approved by all parties, whether it’s tripartite, because we currently have three, but that can simply be worded more appropriately to say consensus, unanimous consent, on that.

Clearly our feeling is that there are many issues that could happen in Ontario where a referendum is highly appropriate, things like national security, provincial security issues. If we look at a national issue like the War Measures Act, for example, that is something that is clearly non-partisan, in the interests of all Ontarians; items such as the draft. There could be anything provincial or national of interest or security that clearly you can see the need and the purpose for a referendum on for all of the population.

When we get into the specific problems we have, such as regional disparity and geographic bounds that don’t provide for what we view as real fairness, that will follow. Even Conservative members need to be sure that all of those things are outlined as you follow this process and that with each point you’re going to make today that automatically will follow, but will only follow when the terms or conditions are that ultimately you have unanimous consent for that subject matter.

Mr O’Toole: We’re spending a fair amount of time, and I could be completely out of order here, and I hope you will forgive me for that. However, the purpose for this committee to meet, and this has been said by everyone here, is to map out or scope out potential legislation. There would be a whole series of things there, whether it’s citizen-initiated or third-party participation of some sort or other, and it’ll be a very difficult process. I can see that for sure.

I want to make an example out of this by saying that if we did scope out something and come up with a report, the report would probably not pass unanimously. I can see that happening. The government can bring forward legislation which won’t pass unanimously. I don’t think many things except “Goodbye to Mr Rae” ever passed unanimously. I don’t mean that flippantly. That’s where all parties agreed to — whatever.

That being said, I’ll make one example. On the important issues to all Canadians, indeed to every citizen, M. Morin referred to the whole issue of the “distinct society” clause that fell out of the Charlottetown accord

which one member of the Manitoba Legislature voted against and killed the whole thing. Your possibility of ever getting unanimous consent on anything is between zero and minus some big number. It's not going to happen, Gilles. Not that I don't want, in every regard, to get along with you and every other member of the Legislature. My point is that I think it's very pre-emptive. I don't disagree with your right to make the motion. I think it's totally out of order. I personally feel that it pre-empts the entire process from happening. A government, at the end of the day, to not hold a referendum is denying the very process itself. If one member of that committee decided to, he could stop the whole process of Ontario government.

On balance, if you had a party with 90 members — we're going to have 103 members; that's a foregone conclusion, I hate to be so bold — you may have one party of 13 members and no third party. I can't for one moment think that this particular recommendation is even in order. Not that this isn't a democracy, but how do we get something to the House to be voted on? We'll never have unanimous consent here, not because we aren't amicable friends but because human nature won't allow it; whether it's on minority issues or French, on some issue we'll have a problem working through that section.

I've gone on too long, and I'm really asking the clerk of the committee or the Chair to tell me if this recommendation, as I understand it, is in order. With all respect to M. Morin, I want to go through the process, agree and disagree on certain aspects and steps — I think there are seven or eight in this report, the guideline here; and at the end of the day, it may not be an unanimous report — then go forward, and in that process itself it will say that there will be some vetting process for, "Should we vote on going to war?" or whatever the big issue is.

We won't get unanimous consent even on the specific referendum item, ever. Some people may be pacifists and just, by some spiritual nature, completely diametrically opposed, and so it doesn't happen because of one person. That's not democracy. Democracy is a majority situation, and anything else would be presumed dictatorial. I have a serious problem with the whole recommendation. I need some kind of clarification. Have I made myself clear?

The Chair: Yes, I think I understand what you mean, Mr O'Toole. It is in order. A member can put forward a motion. In itself, there's nothing problematic with that. You may very well disagree with what Mr Morin has indicated he intends to do with his motion, and you may have the opportunity to vote against it when and if we get to a vote on it. I hope that will be satisfactory.

Mr O'Toole: But I would like them to participate.

Mrs Pupatello: Just in response to Mr O'Toole's remarks, the irony here is that the current government does have a majority government and you were duly elected by the people of Ontario to be here and represent your population. There are various things. We don't have one man, one vote in Ontario today, nor do we have that in Canada. Even with the change in boundaries that's coming, it is moving closer to one man, one vote, but certainly is not, and it does take into account things like regional and geographic disparities etc.

1620

Because of that very nature, we come as close as we can in the government of Ontario and in our Legislature to be as reflective as possible of the Ontario population. Because of that, that is the whole process of how governments bring bills forward, giving all parties the opportunity to debate in the House: You read it into the record, read the bill for first reading; it goes to committee, there is discussion; it goes back into the House for second reading, there is debate; it goes to committee, often it's debated and more information is gained at the committee level: it comes back into the House for third reading and now, with the changes made by the NDP last term, there is debate on third reading as well.

That is a process that is ensconced in Ontario history, that regardless of what party is in power, all of us on all sides of the House have that opportunity to debate. Given your scenario of, say, 90 out of 103 coming from one party, regardless, each of us as members is reflective of the population.

To suggest that the subject of bills is not in the control of the government is simply false, because the government in power has the majority power to bring forward bills of any subject matter for due debate in the House by all parties through a process that is ensconced in our Legislature. To throw in, in addition to that, the issue of referenda is simply an opportunity for the majority government to move the decision-making and the difficult part of governance on to a very simply asked question through the process of referenda, and that is something the Liberal Party cannot support.

What the government of the day will do, as has been done in history, not just in this jurisdiction of Canada but internationally as well, is move and manipulate and change the nature of the question so that the result therefore does not speak truly of what the general population feels about an issue. The underlying reason for that is that governing is not simple.

You are now finding that out as the government of the day. The new members opposite can relate — and I'm a new member as well — that the answers are simply not as easy as we thought they were before we were elected. We realize now the dynamics of every new bill, all of the implications of every new bill, and all of us are bound by our elected nature to take all of those into account as we deliberate and as we eventually vote. That is because governing is not simple. That too is why the Ontario Liberal Party cannot support the idea of referendum across Ontario if all parties are not participating and agreeing with the subject matter.

In effect, you have already got your mandate by the population of Ontario. Now the Conservative government today, and hopefully different later, you have the difficult job of making the decisions on behalf of your regional disparities that are accounted for, geographical disparities that are accounted for in your very makeup as representatives. That becomes your difficult task, not to be off-loaded through a very simple yes/no question through the method of referendum.

The Ontario Liberal Party cannot support that because we understand, as we've seen in many jurisdictions, how that has been abused, and the fallout has not even been

understood by the very people who created it in the first place. It's now only after review, years later, that we see some very remarkable outcomes that were never predicted and that now governments of the day are simply having to face because of a very simple question that was not thought out, that was driven more by ideology rather than the acceptance of a very difficult task ahead, and that is for this government to govern. On that basis, our very ideology on this simply doesn't agree.

You need to understand in particular, Mr O'Toole, that the very makeup of your party today is reflective enough of you as government to make the difficult decisions, and we agree many of them certainly are.

Mr O'Toole: I appreciate the response and clarification of your position. I'll put it to you that we go through the process — and I'll make the same point I've made. We set up a format and some legislation, and the first item that comes forward is, let's say, the government isn't entitled to carry a deficit. That's the first item for a referendum, hypothetically. You would never get agreement on that, and that would mean that one member from a three-person party could stop all of that from happening, from even allowing the people of Ontario to have a vote on it. That isn't democracy at all; that's the complete antithesis of the point you're making. It's allowing a minority to govern.

The ideal state is Switzerland, where they have one person, one vote. I think that's how it works. I read a few things about it; I can't remember, it's so long ago.

Mrs Papatello: You always forget the details, Mr O'Toole.

Mr O'Toole: No, no, I guess my point is that I hear and understand completely that the government forming a majority makes decisions which may or may not be popular and has to live with that. You're saying we're offloading this responsibility of decision-making and simplifying it by holding a referendum, so we just want to debate this until we fall down in the street. You're clearly on record as saying that one person should govern Ontario. That's what I hear you saying.

Mr Ouellette: I believe the concern in the example that has been brought forward is valid. However, I don't necessarily agree with the method or result that has been presented in order to address the issue.

The Chair: I'm sorry, Mr Ouellette.

Mr Ouellette: I said I agree the concerns in the examples that have been brought forward are valid. However, I don't necessarily agree with the method of solving the problem that has been brought forward. I don't know if there are other solutions that can be presented or if there are other jurisdictions that we can review to find out how that situation was resolved there; or if, through the petition process, the wording of the question is actually placed on the petition that the individuals sign may address the problem. I don't know if there are ways. In other words, there could be examples that we could bring forward that may take care of that situation in the first place.

Mr Dave Boushy (Sarnia): I want to make a very brief statement. It's very obvious you're not going to agree or try to change your minds. This is your caucus decision and you're not going to agree with us, regardless

of what we say. I think you're splitting hairs, really. To have a unanimous vote on any issue, one vote could scuttle the whole thing. You don't want that to happen, in a committee or the House. It's silly, really. Anyone, even if your own members and the whole caucus agree to support it, if one of your members gets up — and it's happened before, one member says no. The whole thing's off? Come on, now. Let's be reasonable.

Mr Clement: I don't want to appear to scuttle debate, but I was actually going to call the question. I think we've discussed this one —

The Chair: Are you prepared to call the question?

Mr Clement: I am prepared. In fact, that's what I probably just did.

Mr Boushy: We're not going to convince you. It's your caucus —

Mrs Papatello: Can we just finish the speaker's list and then we'll vote for your motion?

The Chair: There are two additional speakers.

Mr Clement: I'm willing to defer.

The Chair: Okay. If there's two more speakers, then I'm quite content to limit it. Mr Hastings, do you want to speak too? Is that what you're indicating?

Mr Hastings: I would simply like to hear from Mr Silipo whether he has any suggestions on this conundrum that we have on our plate, if he sees a way through it.

Mrs Papatello: I would ask the government members who are sitting on the committee today to think of an example of a referendum item or subject matter that this majority government cannot bring forward in the shape of a bill, introduce into the House and pass. Mr O'Toole's example of the budget, a balanced budget etc with no deficits, in fact is a bill that the government can bring forward. You are a majority government, and you, if that is your wish, can do this without a referendum. Based on the campaigning that this government did to get itself elected, we would expect that would be one of the first that you might bring forward.

The reality is you can do that today as a majority government. Despite what efforts opposition parties may make, we realize that ultimately if you choose this bill to pass in the House, you can do so. I would challenge any member on this committee to bring one issue forward that you, as duly elected representatives from constituencies across Ontario, cannot pass in the House through due process — that has been the history of Ontario for hundreds of years — without a referendum. This is not an issue of splitting hairs. The subject matter is far more far-reaching and widespread than that.

1630

Mr Rick Bartolucci (Sudbury): Just to follow up, with all due respect to Mr Boushy, I think that's the dilemma that we should find ourselves in when we have an all-party committee that needs unanimous consent. We don't want to have to use referendums needlessly or frivolously. I think all three parties agree with that.

I would suggest, if we listen to what Mrs Papatello was saying, there are so many other avenues that a majority government has to introduce its agenda that referendums should be that very special time or the special item that could and would require all-party agreement. I know it's hard to do it, but that's the

essence. Referendums shouldn't be so loosey-goosey that they can be abused, and this is probably the safest safeguard one could put into place.

Mr Silipo: The reality is that there is nothing now to prevent this government or any government from going and holding a referendum on anything they want. I have to say again, with all due respect to my Liberal colleagues, that this is a very convoluted way to go about stating you're opposed to the concept of referenda. I've heard, with all due respect, people say that they are in favour of referenda, but then we want to make sure it never happens unless everybody in the world agrees. We've had an interesting discussion on this point, so the only way I could answer Mr Hasting's question is, let's get on with the vote and see what happens.

I say that, again, with a lot of respect for my Liberal colleagues. I know this is a difficult issue. I can certainly tell you, from the discussions we've had in coming to grips with it, that there are lots of good arguments to say that we should tread very carefully in this area, and as we get into the discussion — I hope we do at some point — I will certainly continue to raise some major caveats that I think need to be put into this for it to work properly.

I heard last week from the Conservative caucus members here that there is some willingness for some of those issues to be discussed, and I appreciate that. We will see whether we come to agreement or not, but we're not going to know that until we actually begin to talk about some of the substance.

It's clear that on at least one major aspect of this, in terms of mandating referenda, as I've stated before, we are opposed to that concept, and there may be other pieces on which we disagree. Having said that, we come at this not just in principle saying that we support the concept of referenda, both government-initiated — "Parliament-initiated" would be the way I would put it — and, on the other hand, citizen-initiated, with all of the due process pieces that I think need to be put in there in terms of the respect for minority rights that we discussed last week and mechanisms to deal with that in terms of taking into account the regional makeup of the province, which is something we will want to see injected into this in terms of the threshold for citizen-initiated referenda.

It's by looking at those kinds of things that you determine whether support in principle for referenda can be translated into anything more than that. I'm willing to do that. I can tell you that I have a mandate from my caucus to be here and to talk about that, and I'm interested in getting on with it.

The Chair: Are the members of the committee ready to vote now on Mr Morin's motion?

Mr O'Toole: We're going to have a referendum now.

The Chair: Everyone is ready to vote. Could you read the motion.

Clerk of the Committee (Ms Lisa Freedman): Mr Morin has moved that an all-party committee be formed to determine whether there should be any given referendum and that the decision of this committee be unanimous with respect to any referendum question.

The Chair: Would the members who are in favour of the motion please raise their hands.

Those who are opposed to the motion, please raise your hands. The motion is defeated.

Mr Clement: I just say to my Liberal friends across the way that I'm certainly very much interested in their input as we go through this. There may be parts of discussion that they feel very comfortable with and probably parts that they don't want to sign on to, but like Mr Silipo, I'm perfectly willing to engage in a very constructive dialogue here to see whether we can come up with something we can all be proud of.

Mrs Pupatello: I guess we kind of expected that outcome. I did want to take the time, before we move forward through all of the other discussions, to bring forward some information that I feel some of the government members may be interested in. We certainly looked at the kind of history this issue has internationally, in particular in the United States, where it's been quite prevalent of late, and I thought I might ensure that the government members understand what potential outcomes of these kinds of issues are on life, on governance, on governments of various levels.

I wanted to choose the most relevant example that's had probably the greatest amount of publicity and that we might even be a little bit familiar with, and that issue that was used in a referendum in the state of California was Proposition 13. Some of you may be more familiar with it than others.

My greatest concern in watching the happenings with Proposition 13 in California was that the general public could never have expected the outcome in their vote on Proposition 13, because it was brought forward with one thing in mind and that was control of tax and tax levels. The similarities, to me, of the government of the day then in 1978 and the current government today in Ontario are great, so I want, and I feel it's my responsibility to do so, to go forward with that kind of information.

Somebody far more clever than I said that life really is no surprise. The only time it's a surprise is when there is history we forgot or history we didn't know. I hope that you'll realize that this discussion is critical, in my view, to this discussion that will eventually allow this kind of bill to go forward and perhaps pass, because as Mr O'Toole pointed out, you have a majority government and there is a process to bring a bill forward, which I have no doubt you will do, for due deliberation and perhaps eventual passage. I need to be on record with how strongly I oppose this move by the Conservative government. In my view, it is a throwback to things that have happened in other jurisdictions in their history that governments of the day, families, societies, organizations have come to regret.

I want to give you a capsule of what Proposition 13 was when it was voted on. I have a quick description just for further edification of the government members:

"California's tax revolt was born of emotion and frustration. It was a movement that was to have a profound impact on changing the structure of local government in California, on cutting back government services, on forcing local government to devise new ways to raise money. It was a movement that would quickly influence other states and other populist efforts to cap tax spending."

As I go through, I hope you'll note that some of the jargon that's become quite popular today in our government and in the House you'll see very much reflected in the pieces of information I'll be advancing today.

"Still, some five years after passing Proposition 13" — this was written, I believe, copyright 1984, so it wasn't that long after the passing of Proposition 13 — "and adopting other tax-cutting measures, California voters really did not know the full effects. Despite some discouraging projections from government officials, deputy managing editor Noel Greenwood believed that the Times indeed could set out to try to document the effects of the tax revolt in cities...."

And so they did. They went forward and looked at this kind of revolt in the area of tax and they tried to document it in a very concise manner. If we go further: "Deciding California's tax system at the ballot box" — and I have no doubt that this really is the intent of passing the bill on referenda and what the nature of the first bill will be. If it doesn't happen very quickly on certain issues, if I were a betting person, I would likely bet that the first referendum issue would be a tax one and it would neatly coincide with an upcoming general election in Ontario.

1640

"Deciding California's tax system at the ballot box has meant relying on insufficient and sometimes misleading information. It turns out, for example, that repeal of inheritance taxes has mainly aided the wealthy, rather than middle-class survivors, as had been argued during the campaign. In campaigns for hotly contested initiatives, such as Proposition 13, both sides spend large amounts of money for slick drives that barrage voters with slogans and catchy ads;" — I think all of us here can relate to that — "as a result, voters must decide sweeping initiatives by balancing emotional appeals, rather than comparing detailed data about the state's finances."

The similarity here is striking, because in effect that's what Ontario legislators must do.

Mr O'Toole: Mr Chair, on a point of order: With all respect, and I'm sincere about this, we have voted on the issue of pros and cons on referenda. I think you could submit your report that you are reading, that someone else wrote, to the clerk of the committee and let it be considered, along with a lot of other issues in this process.

I, for one, did not come here for that. We've dealt with it. We've voted on it. It's finished. We're now moving forward, in my view, consultatively, to develop a framework at the end of the day which may or may not result in legislation. I have no idea; I would hope that it would be at that point in time. I really don't think those comments are particularly germane to the discussion, the purpose for this committee to be sitting this afternoon.

The Chair: Could I just say this in response to your point of order. When I started the meeting we started on question 1: "Should there be legislation authorizing the holding of provincial referenda?" The motion was moved, it was defeated, so at this point we're still discussing that question, should there be legislation authorizing the holding of provincial referenda? If your remarks are specific to that question I will allow them to continue.

Mrs Pupatello: Yes, and I still have the floor and it's very relevant to that.

I guess I have to be specific. Proposition 13 was one of the referendum items that was passed, followed by some 19 others that all took various forms, but the kinds of questions that were involved were those same kinds of things. They were issues that were downloaded to a proposal or a referendum when the decision-making was quite difficult for the legislators themselves. What they chose to do was allow grass-roots movements of the kind that we've seen with various examples in North America, certainly difficult for legislators to deal with.

We spoke earlier, and obviously in your other committee meetings there have been discussions about what kinds of issues might come forward and what types of court challenges resulted. Our legislative counsel spoke to those at the beginning of this meeting, that if you had a referendum that was devised at a local, grass-roots level and received a groundswell and you were able to get the sufficient level of support that you needed, eventually you could have the kinds of issues on a ballot that government members could no longer control, such as the elimination of the Catholic school system. You could receive the full level of support you needed within the kinds of conditions and terms that you set out as referenda, but in fact you would be moving that kind of very divisive decision off the backs of the legislators, duly elected, with geographic disparity in mind, off the backs of legislators who were elected with the population disparity in mind, and moving that kind of answer down to another level, which of course in our view is not relevant.

Let me go through a New York Times article, which is "Lessons From California," written September 25, 1995:

"California, that harbinger of so many fads and fashions, is now a laboratory for the hardship that can result from years of refusing to face up to fiscal realities. Los Angeles county faces enormous cutbacks in health and other services, although the immediate threat that dozens of health clinics would be shut down was eased last week with President Clinton's announcement of an emergency aid package.

"Orange county" — I think many of us remember how famed Orange county became through its bankruptcy as a county, which really was unprecedented, particularly unusual because it was such a wealthy community and many affluent people live in Orange county — "the wealthy neighbour to the south, is in actual bankruptcy, and is trying to bail itself out by raiding funds vital to preserving its bus system and infrastructure. The state government, itself awash in debt and deficits, is unable to help southern Californians avoid shredding the social safety net."

Again, we need to liken this discussion here with Ontario.

"The disastrous economic recession of the last several years has been a major factor in California's troubles. But heedless tax-cutting without corresponding service cuts has greatly magnified the budget problems. Since the tax revolt of the 1970s that led to Proposition 13, which arbitrarily froze real estate tax rates, the state has nur-

tured the lethal idea that public services could be maintained without anyone paying for them. This mentality plunged the state and many of its local governments into debt, some of it covert, as they borrowed from various government reserve and pension funds or issued bonds, notes, warrants and other debt instruments to pay operating bills.

"Like New York and many states, California and its localities have been strangled in recent years by the soaring costs of health and welfare programs and prisons (as a result of tough new crime laws). Education costs have gone up as well because, in the late 1980s, voters approved an amendment to the state's Constitution requiring the state to spend a fixed portion of its budget on education and protect local school districts from the increased costs of enrolment growth and inflation.

"As budget deficits deepened, Governor Pete Wilson and the Legislature borrowed to meet expenses and raided various reserve funds set aside for special purposes. Since Proposition 13, for instance, the state has taken over the collection of property taxes from all local governments and districts. Pressed to meet the new requirements on school spending, state officials simply siphoned money away from funds that had been earmarked for counties. Such actions have compounded the problems facing Orange and Los Angeles counties now.

"Since declaring bankruptcy earlier this year, Orange county has faced the extraordinary problem of paying off \$1.7 billion it lost gambling in the high-risk derivatives market. After county voters rejected a tax increase, the Legislature helped it assemble a package of cuts in bus service and spending to maintain harbours, parks, flood control and other infrastructure. Such steps will produce the money, but at a potentially large cost for repairs down the road.

"Los Angeles county asked Sacramento for the right to raise taxes on cigarettes and to be freed from some costly state mandates. But the county is widely seen among Republicans in Sacramento as a den of wasteful spending. Governor Wilson, anxious to cover his conservative flank as he runs for President, rejected the idea of any tax hike, or even authorizing the county to carry out the deed.

"At a time when the call in Washington is for cutting budgets, California offers a cautionary tale. No one is denying the need for making economies in government spending, but Californians are entering a new era of reductions in the entire scope of government that poses a genuine peril to public safety and wellbeing. Harsh limits on government spending will carry consequences that must be documented and debated in the years to come."

There have been a number of papers and stories that have been written as a result of a look at Proposition 13 10 years hence, and it is critical for us as committee members to see those examples of what indeed has happened. I think all of us agree that this is where the government is headed and we have no way of having our own crystal ball for Ontario, but the comparison is absolutely startling and I feel it is imperative that we ensure that our people know.

There was an article that was written in Newsweek, again only in July 1995. The article by Jane Bryant Quinn was called "The High Price of Protest." Orange

county is the first municipal debtor to stiff its creditors deliberately. It's a result of Proposition 13. When Proposition 13 was brought forward to all of the voters in California as a referendum item, Californians looked at the ballot item and said, "I'm voting Yes on Proposition 13."

What Proposition 13 said was that it would limit the increase of property taxes on properties across the state of California to a cap of some 2% per year.

1650

Given that in the state of California municipalities received the lion's share of their taxes from property taxes, this didn't limit the kinds of revenues that were geared for the state coffers necessarily, although it had a major impact on that as well. It capped the amount of revenue that could go into a municipality or more local level of government.

This was a state or comparative provincial referendum issue which was passed but had widespread, huge ramifications for the local governments of the day. Orange county is certainly one premier example of the devastation that can result from it.

"Poor folk kowtow to their creditors, the rich hire lawyers to stare them down. The trouble with bankrupt Orange county, Calif., is that too many residents are rich."

Therein lies the greatest irony, that Orange county, with such a huge level of affluent people living there, went bankrupt after Proposition 13, which limited the level of tax increases or put a cap on property taxes. Exactly as a result of that, Orange county went bankrupt. We need to know why.

"They're telling the saps who lent them money not to expect to be paid in full. Bond market professionals say that this is the first deliberate default." It wasn't that the money wasn't there, but the people of the county said no because, "They no longer feel sure that other major municipalities won't renege." In fact, those in the bond market say, "If Orange county will go this way, so will other municipalities," and it certainly has a significant effect on the business and bond marketing communities.

"The rebellion crystallized last week when Orange county voters rejected a half-cent increase in the sales tax." So with the passing of Proposition 13, which also limited the property sales tax and capped those property taxes for the local government, all they were left to do in terms of revenue finding, because they needed to find ways to bring more revenue into their coffers, were items liked user fees and sales tax. But again the voters rejected it. So even when that county asked for a half-cent increase on the sales tax, the people in their mad fury and emotion related to tax increases, because they had just been seeing repeated efforts to increase taxes, said no, even as minimal as it was. It's really quite strange that the population in the county would have said, "I would prefer to bankrupt my county rather than allow a half-cent increase in sales tax."

I have other documents today that I'd like to show shortly. The public reacts in a very interesting way, and Ontarians are no different from Californians, I guess. In my short life I've noticed that anywhere in the world I've been, human nature really is the same. People react very much in the same way. Whether you live in California or

Ontario, if you ask people a specific question and it has anything to do with increasing taxes, the answer will always or almost always be, "No increase to taxes."

When you throw items into the equation that have anything to do with what our data and our statistics are showing, anything to do with education, maintenance of the quality of education, maintenance even as specific as classroom education funding, or health — those are the two big issues: health as well as education — people all of a sudden are prepared to fund education and health, but that would never be the case in the issue of referendums. That would be as complicated a question as what the PQ decided to ask the voters of Quebec during their referendum. Those questions could never be put easily to the population of Quebec.

So too would we find the questions that were put to Californians in Proposition 13 in 1978, which was approved. The question was simple: "We want to cap property tax increases at a mere 2% per annum. Yes or No?" Naturally human nature tells us that the answer was going to be yes. There was no question of the outcome. That is the reason for our needing to go into an in-depth look at the results of Proposition 13.

Clearly Orange county has already failed to honour one small issue of bonds; but that was significant because it set a precedent for many other counties across America. Many other states in the United States followed along with California in bringing in their version of Proposition 13. I believe that 21 is the last count of states that have brought forward similar proposals, similar ways to bring in referenda to the people, moved the decision-making from duly elected officials down to a grass-roots population base where the issues are never well explained, where people really aren't familiar with issues, that they take that very difficult method of governing and simply move the decisions down to the greater population. I know that Mr Silipo too has done much travelling in his day and can see that indeed human nature is the same.

Very recently I was able to spend some time in Italy. If we wanted to compare governments, Italy is certainly a case in point, where they have had more governments per year, practically, than we've had in Ontario's history as a province or Canada's as a country. Their issues clearly are taxes, and a problem there. But people will always respond the same whether they're Italian, South African, Californian or Ontarian, and the answer will always be no. As soon as you throw into the equation issues of health and maintaining health levels and health service levels, or education and high-quality education levels for children, the answer will always be fuzzy. People are prepared to ensure that those things become sacrosanct, and there are very few things that are. Certainly public safety is one of those as well, and I will show some documentation later that tells us that the public is also prepared to not answer a simple yes/no question when the issue is one of public safety.

Orange county is a case in point that we should know in detail:

"Your 'safe' funds: A number of money market mutual funds, both taxable and tax-exempt, hold endangered Orange county debt — among them funds managed by Kemper, Benham, Alliance and BankAmerica." Some of

the members opposite will likely recognize those large firms. "They've all pledged to maintain their net asset value at \$1, so investors won't lose any principal. Still, this is the second fiasco to threaten the money fund industry in the past 12 months (the first was derivatives). So it's worth a reminder that you have no guarantee. Cautious investors choose conservative funds that buy only US government securities.

"California tax-exempt bond funds. If you're in (or above) the 28% federal bracket and live in California, you'll probably want to stick with the California bonds." The relevance here is that any respect the bond markets had for Orange county was gone as a direct result of Proposition 13. This kind of legacy — if you think "Orange county" you think "bankruptcy" — could be devastating to the business communities in that kind of county. Conservative members here always tell us how business-minded they are. You can imagine how devastating it would be to have that huge cross to bear of being bankrupt as well. It's something that Orange county, years later, simply has never recovered from. Our friend Mr Silipo is fully aware of that.

"These new risks mean that many innocent California cities have to pay more interest" — more interest for other cities that were not bankrupt, but Orange county was; just because the risk was higher, their interest rates went up by 0.25%, and in my view that is fascinating; despite what Orange county people decided to do, the ramifications were widespread throughout the state of California — "to sell their debt, says Mark Donohue of Gabriele, Hueglin and Cashman in New York. Because Orange county wouldn't pay a sales tax, everyone else is paying an Orange county tax."

Imagine that half-cent increase in sales tax in Orange county. The result: Every other county and city in the state of California pays 0.25% more on the interest for their borrowing etc. Every other resident in the state of California is now paying for the mere half-cent increase in sales tax that the Orange county people refused to pay because the question was so simply put: "Would you pay an increased tax?" The simple answer was no. What has now happened? All California residents have paid that significant price. The people who write the article say it very well:

"The state's weaker credits, like Los Angeles county, need to back their debt with expensive insurance or bank letters of credit before they can market it at all. Orange county secured a \$155-million issue with a letter of credit and still paid an extra 1.5 percentage points." That fact there, my friends, is fascinating to me.

1700

I don't know which of you are perhaps in the construction or development industry. Do we see what's going on in Ontario today? In order for a developer to get involved with a development project — banks are an essential part of their business, and they go to the bank — banks now are requiring these bid bonds to even submit their bid for one of these projects.

What's happened today that is fascinating to me, and I know to the Chair as well, is the difficulty for companies today to secure their bid bond. It's never been as difficult as it is today, and that's not because that individ-

ual developer did anything wrong or ever defaulted on payments or didn't sufficiently complete a project or take care of those deficit lists they always make at the end of every project. No. From any developers, regardless of how good they've been and what wonderful credit ratings they've had, those bid bond agencies are now requiring massive amounts of assets and equity to allow them to have the bid bond regardless of the value of the contract they've just won.

That speaks to certain instances in the community at large, in the industry at large, that has had some fault as a result of high recession in the early 1990s. They have now said that risk is too high, regardless of the contractor who has just won that bid. They too have more difficulty today in getting a bid bond than they've ever had in the history.

I know, Mr Silipo, you have noticed this because some of your friends in the Toronto area have spoken to this on several occasions. It's quite difficult now for the financing regardless of how wonderful their credit has been.

It's fairly easy to draw the parallel between what developers are currently facing in the area of bid bonds and what California counties and municipalities face state-wide: The balance of the state of California had to pay for what Orange county chose to do.

"The county's problem is that its refuseniks" — which is what this writer called them, no tax increase on any basis — "don't see the real costs. To save \$50" — in effect that would have been the cost, a mere \$50 — "they've sentenced themselves to tens of millions in legal bills" — legal bills, we haven't even entered into that discussion; we'll have to save that one for later — "money that could have been spent on maintaining the public quality of life. Real estate values will decline, as money doubts discourage families and businesses from moving in. County user fees will rise. The financial fallout will do more than moralizing to stop copycat defaults. Only in movies can you be a hero for —"

Mr O'Toole: On a point of order, Mr Chair: We've been sitting here for a period of time, and I'm not certain that the member who's speaking is a member of the committee or has been substituted in. She has every right to submit her points of view on the debate.

From the researcher's report we have upon the table here the very first order, the first question that's posed, I would move —

Mrs Pupatello: You can't move on a point of order.

Mr O'Toole: should the Legislature be authorized to the holding of a provincial referendum? I would like to move that question now.

The Chair: I've listened to your point of order, Mr O'Toole, and I would in response again caution Mrs Pupatello to continue to make reference to the question I asked: Should there be legislation authorizing the holding of provincial referenda? Mr O'Toole, it is out of order for a member to make a motion on a point of order. So Mrs Pupatello has the floor.

Mrs Pupatello: I recognize that this will never be a simple debate because the whole issue and impact of holding referenda in Ontario will never be simple. Whole my remarks are germane to the question, they seem fairly widespread. Obviously Proposition 13 —

Mr O'Toole: I think you've made your point, though. On my point of order —

Mrs Pupatello: I'm sorry, but I have the floor, Mr O'Toole.

Mr O'Toole: I believe your point is made.

Mrs Pupatello: The reality is that when you bring forward legislation that involves referenda for the province of Ontario, all of us as committee members have to understand what the widest impact of that kind of legislation could be.

It is my view, especially after some of the remarks even today from the committee members, that there is not yet an understanding of how far-reaching and widely impacting bringing referenda into Ontario can be, and that really is my role here as a legislator, while not being Conservative, being Liberal, but having taken the time to see the kind of impact it can have.

Our members of this committee cannot make these decisions without having at least access to this information, so I really have to ask the committee members to have patience. This is so far-reaching, this is so wide in terms of its impact, it is absolutely critical that committee members at least know the den you're deciding to walk into before you walk there. That is our job here; that's our job as opposition members. So I will move —

Mr O'Toole: That's your opinion. That's all it is.

Mrs Pupatello: Indeed, "Tax Defeat Makes Orange County's Fate More Perilous." As mentioned previously, through Proposition 13 in California, the people who were resident there when they voted on it never realized the impact. It is our job then to ensure that Ontarians don't fall into the same trap; that when we're making those very simple ticks on a box that say yes or no, our Ontarians don't make that same mistake.

Mr Chair, I can't tell you enough how important it is for us to see what has happened in other jurisdictions, because this will come down the road here. I have documentation to enter with you that proves not only is the jargon the same, the very issues are the same. When you take from one, you're always taking from the same one, regardless of what jurisdiction you're in. We need to see the ramifications before we jump headlong into this. This is absolutely critical, and in my view this issue of referenda in Ontario will be the single largest impact on the Ontario population.

"Now that the voters of Orange county" — and this was also written in June 1995; quite interesting, because the articles have since come out only years after that fateful day in June 1978 when Proposition 13 was passed. It's taken more than a decade for people to see the ramifications. But all of them, regardless of political colour, whether they were Democrats or Republicans, it didn't matter, whether they were local, state or federal, all of them, could see that it was critical that Proposition 13 was absolutely pivotal in a trigger reaction for a number of other things that happened to that state. So I have to say:

"Now that the voters of Orange county, California, have overwhelmingly said no to an emergency tax increase, it has become even trickier to resolve the severely pressed county's financial problems. And chances that the

state of California might immediately step in to help appeared to be diminishing.

"In a watershed vote on Tuesday, the electorate of the conservative southern California area rejected, by a margin of more than three to two, a proposed half-cent sales tax increase intended to lift the county out of bankruptcy.

"The increase would have raised the combined state and county sales tax rate to 8.25%, from the current 7.75%. Without it, many in the municipal bond market contend, the financial situation in the county has gone from bad to worse, threatening to hurt the broader municipal bond market."

You can imagine the kind of pressures that other municipalities were giving to Orange county not to allow this to go through, not to allow themselves to be bankrupt.

"The tax was to have provided the county, which is short of cash, with \$130 million in new revenue each year" — \$130 million, in perspective, is only half the budget of Toronto's Sick Kids' Hospital. It's actually quite fascinating what \$130 million would have done, not just for Orange county but all municipalities in California.

"More important, perhaps, the vote was being viewed yesterday as a sign of a stubborn unwillingness on the part of this affluent area south of Los Angeles to honour its financial obligations after losing \$1.7 billion last year in risky bond market investments. The county filed for bankruptcy protection in December.

"Paul Nussbaum, a Wells Fargo executive and assistant to the interim Orange county executive, William J. Popejoy, said that with the defeat of the sales tax increase, debt holders might now receive less than full repayment.

"Obviously getting back 100 cents on the dollar is off the table.... This is turning into a typical bankruptcy, where everyone develops a bunker mentality. After this vote, no one is going to remember Orange county just for Disneyland."

That in fact is the case, that you could take Orange county, with the kind of background and reputation that it had, and reduce it very simply to one of bankruptcy. Again, the pivotal cause of that was Proposition 13, which was allowed to be placed as it was before the voters of California because they were allowing referenda in that state, just as the Ontario government is choosing to do today.

1710

If we give examples of the kind of questions that can or cannot be put forward in referendums in Ontario, let me take you back to this afternoon in the House today, where again the Premier was asked about the potential of using referendums for Metro and the megacity in Toronto. Perhaps now because the Conservatives are aware that some polling has been done and more than 50% of those being polled have said they are against the creation of a megacity, given that's the case, when you ask a simple question, a question that could easily be put, "Do you want a megacity? Yes or No?" and you have a sense that the answer to that might be no, the government then has stood up and said, "No, we will not allow a referendum on that issue."

You can't have your cake and eat it too in this kind of debate. You either go holus-bolus into referendum, no sacred cows, or you don't go there at all. When we talked earlier of how we could go forward with referendums on issues of national interest, national defence, there are significant issues that go far beyond partisan politics. That might have to do with our veterans, because of our past wars that Canada's been a member of. It could be something against terrorist activity, which obviously is non-partisan. It could be something to do with that provincially, provincial versus federal. It could be federal versus provincial. It could be Ontario versus other states. It could be Ontario versus other countries.

There are a number of issues that would be non-partisan in nature, and no party would do to Ontario what is not in its best interests. We say if that is the reason, if you cannot allow all parties to have unanimous consent on the issue of what the question would be, on what the very issue would be, then that tells us that it's more in line to be used for a political purpose.

If it's the government's intent, as this afternoon displayed, to use referenda only when it suited its political agenda best, then no political party could agree to using referenda in that manner. If that was not the case, then Minister Leach and the Premier of Ontario today would not have said no to a referendum on the issue of the megacity.

You see, we are now in a conundrum. The government has just caught itself in its very first example of when a referendum is of no use to government and its political agenda, and that is the case; that is exactly what would happen.

I mentioned at the outset that there were very significant reasons why the state of California decided to go to legislating referenda in their state. It was so similar to where Ontario is today. It's interesting, because many fads actually begin in the United States and within a period of five to 10 years they eventually move over to Ontario. I believe the tax revolt is certainly one of those.

It's in the contours of the tax revolt from 1978 to 1983 that there was a grass-roots movement, and let us liken this to the national movement in Canada with the upsurge of the Reform Party, which began in western Canada — very close to California, I might add. It was a very reformist attitude, reformist movement, right-wing, that started this grass-roots, anti-tax movement.

Anti-tax in and of itself is certainly not a Conservative notion. I would hazard to say it's certainly everybody's notion that no one wants to pay more, but the beauty and the simplicity, in their view, that the Reformers had of this kind of tax revolt was that it was always made in its simplest of forms, to which we always said: "Ah, if life were only that simple. If the question that we could ask was only as simple as that."

That will always be the case, with whatever referendum item or subject or question put. That will always be the case here too, regardless of the issue, regardless of the topic and the way you choose to put the question. Ah, if only things were that simple, and our ability as legislators to get out into our general constituency and ensure that everyone voting on proposal A, B, C or whatever it might be is fully informed, has every nuance of the issue,

every possible outcome of that debate or every possible impact, negative and positive, of that issue. All we can say is that we know that is not the case. If we were to —

The Chair: Mrs Papatello, could I interrupt you for one second? I must say it's a pleasure to have you join us this afternoon to give us your opinions on this issue, and I've enjoyed your presentation so far, but we have a couple of other members who have expressed an interest in discussing this and I was just wondering if you could indicate how long you intend to continue speaking on this issue.

Mrs Papatello: If you could tell me how long before I have the floor back —

The Chair: You still have the floor. I'm just interrupting you to ask this point of clarification.

Mrs Papatello: How long are we going today?

The Chair: We sit till 6 o'clock and then we shut this committee down for the day.

Mrs Papatello: I'm prepared to simply stand down for now my position, because I have clearly not finished my discussion, although maybe what I'll do is I'll just continue because then I'll make sure that I get closer to my end.

As I was saying, regardless of what these issues might be or how you choose the subject matter or the nature of the question, it will never be simple enough to allow the people — or it will always be too simple, so that the general public won't be able to make their decisions based on real data, real information. I guess I want to say too, why are we giving our jobs away? As people who are coming here to the Legislature, that is our job.

I am the representative of Windsor-Sandwich. Every time a bill comes forward it is my job to go to my people in my riding and say: "How do we feel about this bill? What are its implications? What are the ramifications? What could possibly happen, good and bad?" It is my job to take that information — if it's good, bad, indifferent, it doesn't matter — it is my job as a legislator to go into the House, bring that information into debate, ensure that I've decided what is in the best interests of my constituents, and then go forward and vote, with a full heart, knowing that I am being truly representative of the people of Windsor-Sandwich. My job here, whether I sit in opposition or in government as a member of the government, is no different. It's all our jobs to do that.

I harken you back to the question I asked at the outset: What possible question could you put to the voters in a referendum that you cannot bring forward in a bill? You are the majority government. You are representative of your ridings by virtue of a democratic election and therefore you have no grounds to do anything other than be the party in power to bring forward bills of the government's wishes. Clearly that's your role.

If we look at the example of when you have the most negative outcome possible, California is always at the top of the list. "Resistance to high taxes, of course, is an ancient and widespread phenomenon, so the term 'tax revolt' is used" in this description "to refer specifically to the popular movement that erupted in many American states in the late 1970s. Impatient with the ordinary processes of legislation, angry citizens took matters into their own hands to propose far-reaching and enduring restric-

tions on the authority of elected officials to tax and spend."

In the case of California, they chose to do that by virtue of a referendum, specifically Proposition 13, whereas in Ontario we already have elected officials who are completely in a position to do what they did there, only in this case the legislators themselves are responsible for the decision-making. Of course it makes us wonder, what responsibility are we as legislators prepared to offload to the general public who can never — not by virtue of not being capable but simply by virtue of living a life where this is our job — to be sure what the outcome could be, based on how we are voting today.

The legislators in Ontario really are responsible for the way they vote and the way it impacts on people. I believe that legislators here have to ensure that they keep their hands on the responsibility. When I come from Windsor, there are people who are Italian, Vietnamese, they speak French, they speak English, they speak Italian. It doesn't matter how old they are. We've got old age homes. We have seniors, we have babies, we have prenatal clinics, or we used to, in the city of Windsor, and it doesn't matter. When I come into the House in my seat as the elected official, I speak on behalf of all of them, and when I vote, I vote on behalf of all of them. That is the danger of Proposition 13.

1720

I wanted to specifically refer to education and health and how they have been affected. The one I would start with as well is public safety, because this Conservative government here has made a special case for public safety: that you're tough on crime, that you're going to ensure public safety and always ensure a high level of public safety for communities across municipalities in Ontario.

Let me tell you what happened after Proposition 13 so that we could look into a crystal ball of somebody else's and say, "What could possibly happen here?" This discussion on public safety in my view is critical, so I would ask you to draw some comparisons as you hear this information.

Public safety: "If you are contemplating a life of crime, Proposition 13 may have made it safer for you to embezzle from your boss but riskier to murder your spouse." Now, this is quite interesting: "If you get caught doing either, your chances of going to prison are higher, and don't look to your friendly probation department for help in getting out sooner. And if your neighbour's house catches on fire while you are behind bars, chances may be better that the fire will burn your house as well, depending on where you live. Cutbacks since 1978 have forced most public safety agencies to refocus priorities and to lower goals in some areas so that they can be raised in others."

This is a very specific example of the outcome of a referendum issue used in California. It speaks to what our agenda in Ontario is, and I am speaking about the Conservative agenda. You have a majority government and you have been elected on certain issues. Mr Chair, I know you'll agree that public safety was one of those, so you must be interested to see what the fallout would be,

especially in the area of public safety. This is critical in my view.

Here are some of the most important changes after Proposition 13: "Many police departments no longer investigate a wide range of crimes and have narrowed their efforts to where they think they can do the most good. That generally means that police now concentrate more on violent crime and offer fewer services in such areas as burglaries, civil disputes and traffic accidents."

Could I hearken us back to the first session of the House, when the Attorney General was on his feet trying to answer questions from Liberal members about why a very simple break-and-enter was simply not a priority with the government. We were shocked at that time because we knew there were cuts that were already happening to government. We already knew the cuts were there, and one of the first fallouts was that if somebody breaks into your house, violates your property, big deal; they are throwing that out of court. Why? Because the Attorney General simply doesn't have the money to fund the court system to allow for those kinds of cases to go through the courts any longer. So as I read this, the similarities to me were striking.

I would say I'm probably going to make a copy as well, because specifically on the issue of crime, when the Conservative government was specifically elected on this basis, I can imagine that it has already started in Ontario without the use of referenda in Ontario. We all know that the subject matter will be one of taxation and the levels of taxation. Clearly we've got to be sure that this is what could happen in an Ontario that would be very much like a California. So let me say that these kinds of examples, which are fairly briefly described, are so similar to what is happening to Ontario today that it is striking, and it's the responsibility of all of us to know what they are.

"There is a greater danger of fires spreading in some areas, including Los Angeles, because some fire departments have reduced the size of crews aboard pumper trucks from four firefighters to three."

Members of the committee, we know that at the end of the day today in the Ontario Legislature, we are bringing forward — is it Bill 94 that deals with firefighters?

Mr Bud Wildman (Algoma): It's 84.

Mrs Papatello: Now, we just told you about an example years after Proposition 13, a referendum issue, where the full effect of that Proposition 13 was that they reduced the number of firefighters on the pumper trucks from four to three. What did that mean in effect? The lessening of the level of safety for people in fires.

With the bill that's being introduced today, the full effect of that bill on firefighters and how they fight fires, I'd ask you to guess what that's going to mean. I'll tell you. It means the standards are not going to be consistent any more. That means with the Windsor firefighters, they will go aboard that pumper truck with fewer firefighters on it than they did yesterday, as a direct result of the bill that this current Conservative government is bringing in today. Again, what's striking about it is that this is the government that was elected because you were going to increase or at least maintain the level of public safety. Why did that happen in California? It was a direct result of Proposition 13, which was only allowed because

referendums were now the order of the day in the state of California.

The other examples are just as fascinating when we can look into a crystal ball that was the reality in California and say, "No, Ontario cannot go there, even though we've already turned the car on that highway."

"Efforts to rehabilitate felons after they have been returned to the streets have been severely limited through major cuts in county probation departments, the most heavily hit area in the criminal justice system, but while that sounds like a major change, there is serious debate over whether those costly efforts ever did much good anyway."

It certainly does speak to having to change the nature of doing business and that there are always better and more effective ways of doing business, but not, in fact, a discussion on not doing that business at all, and that is the issue.

"One area cut the most is research. Thus, at a time when agencies need to refine and streamline programs, they have lost the means of determining which are the most effective."

So it's six of one and half a dozen of the other. Do you decide what to cut? Well, you don't really have the money to decide what to cut, so you just cut. It's strikingly similar to many examples going on now with agencies, boards and commissions across Ontario, that we are failing to give them the opportunity to determine what are their priorities because we've cut their funding so significantly.

"Most prosecutors are forced to carry a heavier workload than most public defenders now, meaning that the publicly paid lawyers who are trying to keep defendants out of prison now have more time to devote their efforts than do the lawyers who are trying to put them away."

Well, that's fascinating. So the very thing they did was allow more people on the street to put those prisoners away, and so, "The court then must appoint private counsel at taxpayer expense, and that is far more expensive than counsel furnished by the public defender's office."

"This has come about in varying degrees around the state, despite the fact that public safety agencies have fared better than most other sectors of government." They did well partly because of strong anti-crime sentiment and partly because legislators, stemming from, again, Proposition 13, required a maintenance of effort in public safety.

Let me check my notes.

Mr Clement: Mr Chair, can I have the floor?

The Chair: Are you finished?

Ms Papatello: "Figures compiled by the state controller showed that cities continued to increase police department budgets after Proposition 13, although much of that increase was eaten up by the rising costs of pensions," quite striking when you make the comparison to Ontario, that as a direct result of the referendum which resulted in the passing of Proposition 13, when they looked to hurriedly, quickly, massively, immediately cutting their level of civil service, they ended up having huge costs of buyouts, pensions etc. I've got to say that our government probably in that manner is following along the same footsteps of California.

All we can say then is that in the area of public safety, the very use of Proposition 13 in California, which is a direct result of the state of California introducing legislation for referenda in that state, was folly. It went against the very essence of what the Republicans stood for, and that was maintaining, nay even improving, the level of public safety among the population of California.

One of the things that was mentioned in the House this afternoon had everything to do with health and the promises the Premier made in health, which was never cutting the expenses, or covering the expenses of health in Ontario. The opposition parties have argued, and we feel rightly so, that there have been massive cuts to the health care system.

1730

How does the issue of referenda and the state have anything at all to do with health? I need to make this very clear because I know now that there are many Conservative members across Ontario, many who are sitting on committee today, who wouldn't believe that the bill on referenda and allowing Ontario to have this legislation in place — what does that have to do with health? Why should members opposite be concerned of the impact of allowing referenda in Ontario and its impact on health? Why would we be concerned?

Let us look at the example that California placed before us where years later we can now see how significant, how dire, it made the situation for health programs in California. Those of us who come from communities that now are having some pretty dire consequences from the massive cuts to health care, in particular our health cuts to hospitals, in particular the fact the cuts have been exacerbating the already low funding level for communities like Windsor-Sandwich — I know that Sarnia is in the very same predicament. I know that an area today like Pembroke is again in that position. Most outlying communities in Ontario that are not part of a teaching centre for health are in that same boat.

We keep saying, "Boy, wait until that commission gets through with Ottawa and then we're going to have some people jumping." But I know that my colleague the member for Sarnia and myself have been dealing with the issue of a lack of obstetrical care in our area.

Mr Clement: On a point of order, Mr Chairman: Could the member please keep to the topic at hand?

The Chair: I would caution Mrs Papatello to continue to confine her remarks to the question I've asked.

Mrs Papatello: The issue right at the outset is how relevant, how important, how critical is and what the impact would be of legislation dealing with referenda in the province of Ontario, on what? On health care. Those members here today who come from areas that are already seeing some pretty disparate levels of health service need to know why the issue of a referendum has anything to do at all with health. So let's look in the crystal ball that others place before us so that we can see what happened after Proposition 13, which again only came into being after the state of California allowed for referenda there.

Health programs: "It is the three million to five million poor Californians who depend on government-subsidized medical care who have suffered the most from health care

reductions triggered by Proposition 13 and subsequent cuts in local, state...spending. While Proposition 13 is not solely to blame, the poor now have fewer medical benefits, pay more out-of-pocket expenses, have greater difficulty finding care and face a longer wait when they do find it."

I find this particularly striking because Ontario is already well on the road there. It's critical for us to note that while Proposition 13 in the States was passed, this was actually documented five years after, so that we could see that in a short five years, they did have a significant demise in the health care system there.

"Says Robert White, director of health services for Los Angeles county," which of course is massive; millions of people in Los Angeles county, "There are lots of people not being cared for, but we don't know how many." The cutbacks also mean that the quality of health care for the poor increasingly will lag behind that enjoyed by the better insured, more affluent majority.

"In some counties, public hospitals — traditionally the health facility of last resort for the poor — have been closed, sold or leased to private organizations to conserve scarce property tax revenues."

This hearkens back to what the very question of Proposition 13 was. They only allowed Proposition 13 because the state of California allowed referenda. That's a very critical bridge that we have to understand.

When they asked the question in Proposition 13, they would allow a ceiling, a cap, only a certain level of increase in property taxes, and during the tax revolt, for those in California, they said, "We will only allow a maximum of 2% increase." Now California faces a number of the same issues that really are peripheral but very germane to what goes on in the province or in the state. California, for example, has one of the largest increases in influx of immigrant population. They have, therefore, a significant level of a low literacy rate, a significant issue with people who are simply not affluent. When you have those kinds of increases, it has a massive impact both on the health care system and on the education system. So our similarities really are quite striking.

Not only that, did you know that the city of Windsor, my area, Essex county, is actually on the same parallel as the state of the California? We're all on the 49th parallel. That is the only one I will consent to not being germane to this topic, but a fascinating fact none the less, that we're all on the 49th parallel with the state of California.

Proposition 13 made the big difference in the area of health not in that it was affecting those who were affluent anyway, but in the very nature of what the state of California was: that it had a massive influx of immigrants. You know that "Run for the border" that Taco Bell always uses? Well, obviously "Run for the border" came from the border of the state of California. They had a massive influx of illegal influx, or aliens, as they call them there, that made huge bites into the health system as it existed currently. Even with the 2% allowance tax increase on property taxes it meant that people were loath to move out of their homes. It was much like the rent control debate today, where we keep saying, "Seniors, prisoners in their own apartments," because they weren't affected by the increase in property tax unless they chose

to move. It is a critical issue that people were not moving like they were going to move.

Even though they allowed a 2% increase, that 2% could never account for the massive increase in services that was going to be needed and was needed in California, even a mere five years after the passing of Proposition 13, because you had illegal aliens, many of whom were illiterate, many of whom had added health care costs for of a number of reasons, and they certainly were not affluent either.

Those people, that kind of population, that massive influx into California, mean a burgeoning need in health, because those who are illiterate also tend to have greater health problems; those who are poor tend to have greater health problems. That same population will tend to strap the very few services that were available in California at the time, and the 2% they were held to, those legislators with their heads under water because of Proposition 13, couldn't move past the 2% increase even though their population demanded it, so the natural result was that the health care service would suffer.

I have to bring you back to why this is relevant to Ontario. Look at even the city of Toronto. In terms of the kind of influx of immigrants we have, 60% of all Canadian immigrants come to the city of Toronto, after that they go to Vancouver and then to Montreal. Those are the three.

When we look at education, we have to look specifically to Toronto. Why does Metro Toronto, whether it's the Catholic or public system, have such great difficulty in terms of increased education costs? It's because there are outside factors that continually influence the education system. You have the highest number of immigrants who come here. The larger majority of them, against the general population, have literacy difficulties. Many, the majority of those, also have difficulties simply because they're poor, for the most part. They come here with very little; they are not part of an affluent society. What that means to the education system here is that it costs educators more for those children than it does for other children. We have to recognize those things.

It takes me back to the tour that Father Day gave me at a separate school on Queen Street East. There's a school out there, and I went to see it. Most striking about Father Day's school was that it had a breakfast program affiliated with the church there, even though that wasn't with taxpayer dollars, but they also had a nursery for the grade 7 and 8 students at that school — and I'll bring this around right now, Mr Clement. Those extra programs are required because the attendance at that school is not the same as attendance at the school in Merlin, in Essex-Kent. Surely we can recognize that the needs of the children of Merlin are simply not the same as those of children in Metro Toronto for the variety of factors I mentioned earlier.

In the strapping down of an allowance of government and legislators to move and help fix those things, when you have the allowance in Ontario for referenda, so that our first question will have something to do with the tax levels, instead of just guessing what will happen, we need to look at what has happened in other areas. Health programs: In my view, for the Conservative members

who have dared to speak out even against their own government lately, we know that this is of paramount concern to them.

1740

"In some counties" in California, "public hospitals — traditionally the health facility of last resort for the poor — have been closed, sold or leased to private organizations to conserve scarce property tax revenue" — fascinating in the climate we currently have in Ontario concerning privatization, even in the health care sector, which is quite shocking. "Forty-nine of the state's 58 counties operated 65 hospitals in 1964. As of last January, 26 counties were operating 33 hospitals," a massive drop in the number of hospitals that were being organized and run by counties in California in just a few short years. "The remaining 32 counties lack county hospitals." I would hearken us back to this afternoon's discussion regarding Pembroke, which has since lost theirs. "Nine such hospitals have closed since the passage of Proposition 13, or their operation turned over to private management firms in attempts to cut costs. 'The state lost four county hospitals in the past year, in (some) instances the only hospital in that county,' said Dr Peter Abbott of the state Department of Health Services. 'When you close a hospital, people don't know where to go. Some become sicker. Some die.'"

I thought it was very telling and critical that members of this committee knew this was at least part of the legacy of Proposition 13.

"Last summer" — this was five years after Proposition 13 was passed as a result of referenda being allowed in the state of California — "the Legislature sought to trim about \$600 million from Medi-Cal," which is the California state typical comparative of OHIP — "the state and federally funded health care program for the poor. Lawsuits and delays in putting the cuts into effect will result in fewer savings than expected. But the cuts have eliminated a wide variety of non-emergency medical procedures, surgeries, drugs and other items, required prior authorization for others, and removed about 50,000 people from the program."

Out of those 50,000 people who were removed from the program, 18,000 were in Los Angeles county alone. That is a very striking similarity to the position the city of Toronto is in, because Los Angeles, obviously a huge city, would have the same effects by those kinds of cuts as Metro Toronto, where the greatest concentration of those affected will be.

"Crucial in this was the redefinition of a 'necessary' non-emergency service. Medi-Cal once paid for any service 'reasonable and necessary for the prevention, diagnosis or treatment of disease, illness or injury.' But the new definition limits services to those 'necessary to protect life or prevent significant disability.' As a consequence, a patient with a hernia, for example, may or may not have to pay to have it repaired. "Short of that, however, the program in effect says to the patient, 'It won't kill you, so you will have to live with it because we don't have the money to pay for it.'" This in my view is striking: "Paul Ward, president of the California Hospital Assn, says the result of these new guidelines is

that 'nobody (doctors and hospitals) is doing anything they don't have to do in order to save life and limb.'"

It is so critical for me at this point to give you the clearest parallel of all: a letter dated December 2, 1996, from Dr Glanz, chief, Cardiac Catheterization Laboratory, in my own community, where he talks about a letter he received from the Windsor Regional Hospital. It was also copied to Jane Pickard, who is involved with the programs at that hospital. This is in Windsor in 1996, so if you recall the discussion we just had regarding the effects of Proposition 13 and what kinds of decisions people were forced to make — what kind of health services to continue to provide, where do you draw the line, what is necessary, what's not necessary — we had this letter faxed to us only a couple of days ago:

"Further to our meeting of 18 November 1996, I wish to confirm plans to reduce the number of cardiac catheterizations at Windsor Regional Hospital." For those who aren't that familiar, and I'm certainly not, the cardiac catheterization procedure prepares the patient for bypass surgery. This is a critical element in any hospital across Ontario, because without it, the patient doesn't get the bypass.

Ontario has an aging population, an increasing population, and regardless of what this government has done to supposedly help those lineups for cardiac care — if you recall the front page of the Toronto Star the other day, the lineups haven't gotten any better; in fact, the lineups have gotten worse, even though the health minister doesn't know why, and he suggests he's tried to fix that, while it's gotten worse — we see now that they are reducing the amount of money to allow the cardiac catheterization process to continue, that where it's already been shut down to three days, it will now be shut down only one day a week.

Why is it relevant? Because that means it'll take longer for people to get that process completed so they can move into this lineup, which is the bypass, and bypasses are not done in the Windsor area. We are simply delaying the line and making the line longer for people to eventually get bypass surgery.

I should give you a copy, Mr Boushy, the member for Sarnia, because Sarnia and Windsor have many similarities, particularly with health care services available to us. This is coming down the road for Sarnia as well, and I hate to be the harbinger. In the olden days they used to shoot the messenger, so thank goodness that we don't have kings and fiefdoms that still have that practice in place. That is what's going on in Windsor.

What's telling about this is who will decide that the cardiac catheterization for a particular patient in Windsor is no longer as relevant. It is much the same in Los Angeles county or even with the 50,000, state-wide, in California who were then removed from receiving the kind of care that was needed, and again the critical point there was the redefinition of "necessary." If we hearken to the debates we've had in the House of late, many, today and yesterday, were around the definition of "disabled." You recall that our member from Hamilton, Dominic Agostino, asked your Minister of Community and Social Services, "Are you changing the definition of 'disabled?'"

Why is that conversation relevant now? Because this is what the current Conservative government is going through, thrashing around where to find the money even before the element of a Proposition 13 hits Ontario, and Proposition 13 could only happen because the state of California had a referendum law because they were bringing forward legislation and it passed.

This conservative, right-wing agenda of California allowed themselves to pass referendum legislation to have the opportunity, for those in power that day, to put the very simple question before the people of California, "Do you want to stop the taxes rising in your state?" They didn't say, "Do you want to ensure that no one gets knocked out of the health services in the state of California?" so that people would have said yes. How do we know they would have said yes in that case, that they wouldn't allow those people to get kicked off? Because they did polling at that time. Even the polls of the day showed that had the question surrounded the level of health service available to people, they would not have voted in favour of Proposition 13.

Regardless of the decade we're in or the state or province we live in, regardless of where, there are some things that people will always say yes to. One of those things is health care. But the people in California never knew the full implication of Proposition 13. In the typical household you've got a couple of people working. One might work on a shop floor at Ford, the other might be an attorney in the state of California. Did any of them realize that when they said, "Yes, I want a cap on my property tax of only 2%," that meant 50,000 people would be thrown off the necessary medical emergency services required of them? Had they done it, had they known that — they did polling at the time. When they went back later and started asking, "Hey, are you glad you voted that way?" the majority of the people said no. It was really quite fascinating. I have those data to enter as well: After the fact, when people saw the horrendous outcome of Proposition 13, they said, "If only I could choose again." The majority of the people would have said no. Those are very striking data that all of us must keep in mind.

1750

In California at that time, "About 260,000 people known as medically indigent adults are no longer eligible for Medi-Cal" — these indigent adults are the very people who require services the most; that probably goes without saying — "and counties have been forced to assume responsibility for their care." In fact, counties have been forced to assume responsibility for their care. The counties were the same counties that weren't allowed the increase because of Proposition 13. They were now being forced to assume the responsibility, the financial cost of that additional burden. The very thing that Proposition 13 was supposed to avoid put the counties in the most untenable of positions of having to pay more and offer more services that were not available through any other means because of the very thing their residents had voted for, and the people simply had no idea of that.

"The state continues to help pay the cost, but at a rate 30% below what it had been spending under Medi-Cal. Counties have to make up the difference. In Los Angeles

county, the program change has caused about 40,000 people who had been treated at private facilities under Medi-Cal to turn to already strained county facilities. Thirty-three other counties contracted with the state to administer a program in which it pays private hospitals to care for the medically indigent."

That's quite fascinating, because then they take public dollars and contract out to private hospitals etc to pay for the care. While originally you had those counties running the hospitals themselves, they got out of that business. Why? Because they couldn't afford it, and then when they realized the effect it was having on the population, they turned around and spent those same state dollars paying the private sector to offer the service. What are the chances, do you think, that they were going to pay more or less? When you have a government or a non-profit run that facility without the opportunity of a profit margin to be considered, the private sector will always be more expensive.

How is this related to Ontario and the issue of referenda that would allow a Proposition 13 to happen in the province? Let's look at what's going on today. We have the consortium of IMOS, which has now taken over the maintenance of the southwestern highways, so the 401 comes right into Windsor. It does the salting, does this, does the other. I'll give you a perfect example to bring it home to you.

When you do the run between LaSalle and Amherstburg, the salt truck from MTO used to come along that road and throw salt every time it had to.

Mr Clement: On a point of order, Mr Chair: Is the salt truck germane?

The Chair: I would again caution the member to keep her remarks confined to the question at hand.

Mrs Pupatello: Highly germane, and I'll just explain how germane it is: This change from not just publicly funded but publicly organized and administered that happened in California went from public to private. Was it any cheaper? Why is that germane? Because they were forced to do so because California allowed for referenda.

Not only that, the similarity is striking because in Ontario we're already having to make these kinds of decisions. When you ran your car from LaSalle to Amherstburg in Essex county, the townships along that run were charged an average of \$900 a year to throw salt every time we had a storm. Today, now that those roads have been privatized for the maintenance contract through the consortium of IMOS, they are being charged \$20,000 a year. Do you know how many people live in the town of LaSalle? Some 20,000 people. That's a buck a year for every person in LaSalle who is now going to pay to deliver the salt on those roads that MTO used to do for \$900.

The reality is that \$900 was probably never enough, and the Ministry of Transportation should have wised up a long time ago to charge a very reasonable cost and fee for delivering salt on the road the whole year; \$900 really doesn't seem enough to me. But \$20,000, isn't that interesting? The moment the public service is turned over to the private hand, when you have to include the profit margin in the deliberation of what your invoice will be, the amount will always be higher.

That is the point. That is exactly why it is germane to this argument: The government of the day in California was forced to make those kinds of choices. They were forced to say, "We must provide the service because we were elected on the kind of agenda that talked about public safety, but now we never have the financing or the revenue that would allow us to provide the service."

What was the answer? The answer is that the private company is now charging \$20,000 to every township in the county of Essex that is going to get salt thrown on the road every time there's a snowstorm. Isn't it fascinating that Ontario is already headed down that highway, and we haven't even brought forward our Proposition 13, because we are still in the argument of allowing referendums in the province? That is why the salt on the roads is very germane to the argument we're having at the time concerning bringing in referendums in Ontario.

This issue of what the health service is like is critical. As the restructuring committee makes its way around Ontario, today's announcement was Pembroke; in last week's announcement or two weeks ago it was Thunder Bay; before that the bulldozer hit for the first time in Sudbury. Nevertheless the answers, after it's finished, are always the same: less service. How strange it is that the commission always comes up with less. Do you think those commissioners who sit on that restructuring committee go there with the intention of cutting? I think not, because they're given the same document the rest of us got during the last election: "Not one cent from health care."

The fiscal reality of what's currently happening in Ontario is actually quite simple: You can't have your cake and eat it too. You can't balance the books without finding major sources of funding in the area of health, so one has got to go. Clearly the government is choosing that the place to go is health.

What happened after Proposition 13 hit California? Those kinds of choices were also there for the legislators and the local governing people of California. They had to start choosing, and what did they choose? You would think that our current restructuring commission is like a throwback to the state of California. Everywhere they went, they closed things. In every hospital they visited they shut down beds; they closed down whole hospitals. It didn't matter if it was the only hospital in that county in California; they shut it down.

Let's liken this to now, today in Pembroke. That was the only hospital in Pembroke and they shut it down. You guys were on this kind of textbook long before I ever got my hands on it. We're already travelling down the same highway, even before we're going to allow a referendum to hit Ontario. A Proposition 13 is going to hit Ontario faster, it's going to make our heads spin probably faster than the young girl's in the movie, the Exorcist. In any event, "The patient load in the remaining county hospitals continues to rise." Now we're back in California. Why would the patient load continue to rise?

Mr Hastings: A point of order, Mr Chair: I don't want to characterize the Exorcist in a bad light. I'm wondering whether the member isn't making rather questionable allusions to that movie in the context of what she's

talking about. I think she should reconsider her remarks in that light.

The Chair: I again caution the member to make sure her comments are specifically in reference to the question at hand.

Mrs Pupatello: Yes. My reference was simply to the speed with which our heads would spin. I withdraw that because it's probably offensive.

Mr Hastings: Thank you.

Mrs Pupatello: "The patient load in the remaining county hospitals" — don't forget. Likened to Ontario,

where did the hospitals that closed in the counties that only had the one hospital go? Clearly they headed for other hospitals, and that's exactly what happened in California. Expect the people of Pembroke to start to travel. Where are they going to go when the hospital is no longer in Pembroke? They're going to move elsewhere. The same thing that happened there is going to happen in Ontario.

The Chair: It being 6 of the clock, the committee is adjourned.

The committee adjourned at 1800.

CONTENTS

Wednesday 4 December 1996

Referenda M-393

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)

*Mr Rick Bartolucci (Sudbury L)

*Mr Dave Boushy (Sarnia PC)

*Mr Tony Clement (Brampton South / -Sud PC)

*Mr Carl Defaria (Mississauga East / -Est PC)

*Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

*Mr John Hastings (Etobicoke-Rexdale PC)

Mr Ron Johnson (Brantford PC)

*Mr Frank Miclash (Kenora L)

*Mr Gilles E. Morin (Carleton East / -Est L)

*Mr John R. O'Toole (Durham East / -Est PC)

*Mr Tony Silipo (Dovercourt ND)

Mr R. Gary Stewart (Peterborough PC)

*Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Jerry J. Ouellette (Oshawa PC) for Mr Stewart

Also taking part / Autres participants et participantes:

Mrs Sandra Pupatello (Windsor-Sandwich L)

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

LA20N
XC20
- L20



M-26

M-26

ISSN 1180-436X

Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 18 December 1996

Journal des débats (Hansard)

Mercredi 18 décembre 1996

**Standing committee on
the Legislative Assembly**

**Comité permanent de
l'Assemblée législative**

Referenda

Référendums



Chair: Ted Arnott
Clerk: Lisa Freedman

Président : Ted Arnott
Greffière : Lisa Freedman

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Our address is:

<http://www.ontla.on.ca/hansard/hansard.htm>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Subscriptions

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

Notre adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Abonnements

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO
**STANDING COMMITTEE ON
 THE LEGISLATIVE ASSEMBLY**

Wednesday 18 December 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
**COMITÉ PERMANENT DE
 L'ASSEMBLÉE LÉGISLATIVE**

Mercredi 18 décembre 1996

The committee met at 1534 in room 228.

REFERENDA

The Chair (Mr Ted Arnott): I wish to call the standing committee on the Legislative Assembly to order. When we last met, two weeks ago, we were discussing the referendum issue and working on writing our report, which we hope to eventually table in the chamber. We were working on the very first point on this discussion paper which was prepared by Philip Kaye, "Should there be legislation authorizing the holding of provincial referenda?"

Mrs Pupatello had the floor at the end of the meeting. Before I recognize her to continue her discussion, I would just draw committee members' attention to this newspaper clipping that was from yesterday's Toronto Star, "Quebec Referendum Law 'A Danger to Freedom.'" I'm sure it is of interest to committee members.

Mrs Pupatello, do you have more to contribute to this debate?

Mrs Sandra Pupatello (Windsor-Sandwich): Absolutely. When I had left off last meeting, we were speaking about the impact of referenda on other jurisdictions and I thought that it was very responsible of all the committee members to be aware of the kind of impact that referenda have had in our history and will have in the future of Ontario, should the government continue on this course.

I realized the last time we spoke about this that there were some guffaws from the other side of the committee, almost in disbelief at some of the information I was giving that clearly is factual, because as we've said many times in the House on our side, we refuse to use information that is going to be perceived as biased or partisan and we only choose to use information that is factual, like real statistics, historical facts that simply cannot be misconstrued.

In the case of referenda, because we personally believe that the impacts of them are so huge and can be so long-lasting, it is incumbent on us as responsible representatives from our constituencies that we take the time required to understand the full implication of bringing forward legislation into the Ontario Legislature that has anything to do with referenda. I thought that we would continue in that vein.

There was even some discussion publicly on the whole issue of referenda, and one of the points I'd like to make today — and there are several — regards their constitutionality and political perspectives of that. I was so pleased to see last time that the Chair of the committee was so interested and I managed to keep his attention for

the entire committee time. I hope the same could be said of all committee members today as well. There are legal and constitutional aspects that need to be addressed and I would like to do that.

If I may quote from an article written by one F. M. Brookfield, entitled "Legal and Constitutional Aspects," in a discussion paper entitled *Referendums: Constitutional and Political Perspectives*, he states:

"In one specific respect ministerial responsibility certainly is, or should be, affected when a matter is to go to referendum. The cabinet is released from the need to form a collective view of the merits of the proposal to be put to the people and individual ministers should be free to speak publicly for or against the proposal."

It's quite interesting that Brookfield views this as such because I don't believe that it would be the intent of this government to bring forward a referendum without having an opinion on the matter. In fact, this government wants to have complete control over the writing of it, the issuing of it, the selection of the topic, the distribution of information as such. We have proof of this in the case of the megacity discussion we're currently undergoing. Not only is this government quite clearly setting its position as, "There will be one Toronto. End of story," this government is now spending \$1.2 million to print propaganda material in support of its case.

Clearly, even though those who are experts in the field of referenda believe that governments should be quite neutral, it would be our government's intent, as has clearly been shown already, to be biased on any of the issues that the government itself intends to put forward.

As we began our committee two weeks ago we started with our proposal, to form a tripartite committee, a committee including all parties, and that there would be unanimous consent among all parties as to the kind of question, how it would be put and all of that. The government members, only three weeks ago, turned that down and said that they did not agree with that. When we say we put that forward as an opinion, it's because that's what those who are expert in this field truly believe is the only way to go when governments, state or provincial, choose to go into referenda.

1540

"One may infer that this is generally the position in New Zealand," which is another example that I'd like to use. "Admittedly, in one referendum matter, that of compulsory military training, in 1949, the cabinet appears to have maintained collective responsibility for the policy of submitting the matter to referendum and of recommending vigorously to the electorate, without conceivable latitude for any dissenting minister, that the proposal should be carried. But in other instances, the referendum

for off-course betting (1949), the referendums for extending hours for the sale of liquor (1949 and 1967) and for extending the parliamentary term (1967 and 1990), apparent government neutrality to the proposals seems to have indicated no collective cabinet views about the respective merits of them. Scope was left, one supposes, for a cabinet minister to express publicly his or her own views for or against, if wishing to do so."

Those of us who sit on the government side in this room but may not be members of cabinet certainly have their own views of the current issue concerning Metro Toronto, the megacity, but these members here in our own government have never been allowed to express their own views as to whether we should have one Toronto or not. You have various government members who are totally opposed to the Conservative government's direction and you have other members who are totally in favour. The issue of neutrality is critical in the issuing of a referendum item, and that is never going to be the case here. As we well know, when you enter into partisan politics, you join your political party, and as we are seeing as examples by the Conservative government, your own members simply don't have the latitude to stand up and say: "I don't agree. I don't think we should do it." They should be allowed, if they're really representing their own constituents, to advocate on one side or the other of such a proposal. That will never happen here, and we know that's the case. There are government members from the Toronto area today who are not in support of what this government is initiating and creating: one great big Toronto. All of them are being muzzled. It's incumbent on the rest of the government members to ensure that those members too have a voice and will be heard.

"Of course, such government neutrality had come to be expected in these contentious but traditionally non-party matters."

That really is a significant statement because, as the Liberal Party put forward in our recommendations early on three weeks ago, we believe that issues that should be left for a referendum should be non-partisan and non-political, things that specifically deal with items of national or provincial defence; items of national unity; items against terrorism on a national front, such as the War Measures Act that Trudeau had installed in 1972.

There are a number of topic matters that we know could be highly appropriate for referenda in Ontario, and when we put those forward they really are those that are truly of a neutral, non-partisan, non-political sense, but the government members of the committee only three weeks ago denied allowing us to say that this is when a referendum is appropriate and any other time it simply isn't.

The last time we spoke, about three weeks ago, I had put a question to government members that none of them has been able to answer yet in the couple of weeks ensuing. It was quite simple: What could the government members possibly hope to achieve through referenda that they cannot achieve through bringing forward legislation and allowing us the appropriate course in the House; namely, the introduction of a bill, bringing it in for first reading; bringing it in for second reading, having a full

and open debate in the House; perhaps holding public hearings if it were a matter of that importance; following public hearings, which may travel or not, reporting back to the House; the introduction of that bill for third reading, further debate and finally a vote? There you are as government members, clearly in a majority. Surely, with the whip on your side, you can pass any kind of bill you choose. Why would you need referenda in order to bring something in unless there was an ulterior motive?

For those of you who don't believe your own government has an ulterior motive, then I would suggest that you access more information about those who are truly running your government. There is very much another reason you choose to bring in and use referenda. It is actually quite interesting that one member interjected and said, "What would be wrong with bringing in a referendum on such issues as taxes?" That's exactly the point. That will be your first topic.

You'll say, "What's wrong with that?" If you look historically, every time that issue has been brought forward in a referendum fashion that proposal has passed and the end result for that community, for that zone, that state, whatever jurisdiction we're in, has been the demise of the very two tenets that we all as Ontarians hold dear. Education and health have suffered greatly at the hands of people who never understood that would have been the outcome of voting in favour of whatever the proposal was during the referendum issue.

That is the case, that the government will never put forward all of the data, and that speaks to what our role is as legislators in this House. It is our job to spend as many hours as are required, do as much travelling as is required, meet and speak and greet whomever is going to have impact or is expert in the field of the matter at hand. That is our job to do that. That's not the job of the guy who works at Chrysler for 12 hours a day, five days a week and then goes home to a family of four children. He doesn't need to worry about all the detail that might be incumbent in voting on a proposal, nor does he have time to do that. That is why he elects a legislator to the House here at Queen's Park. That is our job. There can only be one reason you'd like to give your job away, and that's because you'd like to present information in such a way as to have it passed by the electorate and therefore you can pass the responsibility of the outcome of that decision on to the masses instead of taking the responsibility yourselves.

Whether it's going to be taxes, whether you're going to balance a budget or whatever it's going to be, you will then have bound and handcuffed yourselves to the decisions you choose to make and not take responsibility for it. You will have the right to say to the masses: "You made us cut health care to such an extent that it's no longer available for the people at large. You made us cut education to the level that it's not available for anyone but the affluent or those from affluent areas." That will be the result and you'll be able to walk away from your responsibility, the very reason the people sent you here in the first place.

This is what history shows us, that it is nothing but a measure used by neo-cons and those on the far, extreme right wing so that you don't take responsibility for the

tough decisions you have before you; that is, balancing a budget and being able to do so and taking care of the people while you do this; that you make the right kind of priority decisions and choose to spend your money where it counts the most and that you always help the people who truly need the help. You're going to get away from your responsibility by offloading it, frankly, on the general population, who will not take the time to understand fully what the implication of passing such a proposal will be.

When we look at the constitutionality of it, Justice Wallace made various commentaries on the legal and constitutionality aspects, and there were points he took from the suggestions that were made:

"Any move towards binding referendums in New Zealand" — and I guess without question you would insist that any referenda that you pass in Ontario would be binding — "would be a change which has very significant constitutional implications. It would radically alter the principle of ministerial responsibility and would represent a significant tilt away from representative democracy towards direct democracy. The evidence also indicates that the outcome of referendums is liable to be influenced by popular indignation and prejudice, which is readily able to be fanned by advertising and other publicity emanating from monied interests, leading to simplistic and ill-informed judgements on issues which are in fact of real complexity. When that is coupled with the likelihood of low turnouts if there are regular referendums, it is clear that there is a risk of a relatively small number of people misusing the system."

It is therefore this gentleman's view, Justice Wallace, who comes to us on this issue with far more expertise than we in this room that "if anything resembling a system of citizen-initiated binding referendums were to be introduced in New Zealand, it would be essential to ensure that there are appropriate constitutional safeguards. I believe we need to consider whether legislation is required in relation to some or all of the following matters."

This is actually quite interesting: "[A] fully written constitution, which is not readily susceptible to change, that is entrenched in a way which prevents amendment by referendum in which the turnout does not reach an adequate level. It's noteworthy that Switzerland has a written constitution, as do those states in the United States which make significant use of referendums."

There should also be "appropriate constitutional protection for individual and minority rights," again entrenched. "Protection of minorities is especially important because experience indicates that referendums can be used against minorities. Larger groups can use referendums as a vehicle to curb special programs for disadvantaged minorities or to enforce their own cultural dominance. By its very nature, a minority has no defence against the voting power of a larger group. In a context where only numbers count, one can ask, for instance, how long the Waitangi tribunal would have survived, especially when it moved to deal with some of the more controversial issues, if the act by which it was established was able to be the subject of a citizen-initiated referendum."

1550

As our government knows, there are many concerned groups out there today that are highly concerned about their democratic rights and, as well, any move by government policy that serves to —

Mr John O'Toole (Durham East): Mr Chair, on a point of order: I appreciate the views of our fellow committee member. In my opinion, she has expressed the view that we and other Ontarians aren't capable of having informed opinions or making informed judgements. I take great exception to that statement. And I believe, if she wishes to share her views, which she is reading from some prepared text, that she should share that with the Chair and the members of this committee; we would certainly take the time to deliberate on them. But I think this is a deliberate attempt to stall the business of this committee, which is charged with discharging the responsibilities of the people of Ontario and this province. She's providing in her remarks some information and her views. I don't particularly share all of them; some of them I do. But could we not proceed with the debate of the day, the charge of this committee?

The Chair: I hope we can, Mr O'Toole, and you've articulated a significant disagreement with some of Mrs Papatello's comments.

Mr O'Toole: Could I ask, how long is she going to filibuster? For the entire time of this committee assigned?

The Chair: She does have the floor and the standing orders allow her to make her presentation.

Mr O'Toole: Could I ask a question, through the Chair, of the member for Windsor-Sandwich?

The Chair: You may, if she chooses to answer the question.

Mr O'Toole: Is she prepared to tell us how long she is going to filibuster?

The Chair: Can you inform the committee as to when you might be almost completed?

Mrs Papatello: Do I have the floor?

The Chair: You do.

Mrs Papatello: What's important to note is that when we discuss issues with regard to referenda, there are —

Mr Bill Grimmett (Muskoka-Georgian Bay): Point of order, Mr Chair: I wonder if you'd remind the committee what the question is that's currently being discussed.

The Chair: "Should there be legislation authorizing the holding of provincial referenda?" is the question the committee is dealing with at the present time.

Mr Grimmett: On a point of order, Mr Chair: I'd like to point to standing order 23(d) and perhaps ask you to rule. She's referring at length to a document and I don't think that is allowed under that particular standing order. I'd like you to bring the speaker to order.

The Chair: Mr Grimmett is quite correct. The standing orders, strictly speaking and interpreted, exactly indicate that the members must not read unnecessarily from verbatim reports of the legislative debates or any other documents, so I would ask you, Mrs Papatello, to endeavour to do that.

Mrs Papatello: I'm sure the Chair will see, because all of my documents are being transcribed as well through the committee Hansard, that most of what I say

is my own commentary and I only occasionally refer to the text. What I must do throughout this, in my description of what I believe to be essential information necessary for committee members to make their decision soundly and wisely, is to ensure that this information get out, but I must always make it relevant to the topic at hand, and that is, should we have legislation for referenda in Ontario?

Some of the reasons we should not, and I've started with only one of those today, include constitutional change that is the result. What impact on the Constitution is there when we have referenda? As pointed out by this individual, Justice Wallace, he talks first about a fully written Constitution which is not readily susceptible to change. Have we done our homework on that basis? Have we discussed that it is not going to be susceptible to change?

He went on to describe the kinds of things that minority groups have to worry about. Can someone by mere power of numbers — does that mean that we are going to reverse ourselves back to the time when people don't have constitutional rights, human rights in Ontario because someone, a government, is bringing in legislation that is going to allow, by mere numbers, the galvanizing of a vote to go one way or another despite the rights of a minority group? This is critical. Given the fabric of Ontario, given how we are made up in terms of our immigrant groups, in terms of the various races, religions and creeds that exist in Ontario, we can't allow this kind of referenda legislation to continue without a whole dialogue and assurance that we have looked into the very constitutionality, protection that needs to be in place before this kind of legislation goes forward.

Some of the members are so busy talking about how they might stop me that they're not listening to the topic at hand. This is such a serious matter. You can't imagine — as you know, I've been subbed into this committee and I have a right to be here — that I would spend my time at this time of the calendar year, when I have other committee duties and House duties as well, to discuss this issue if I didn't think that the forwarding of this kind of legislation is the devil itself. I truly believe that there are matters at hand and there are people on the government side of the House who have not taken the time to look at the historical view of other jurisdictions that have brought in legislation like this to the demise of their communities. That was the result.

When legislation came in in other jurisdictions, they have waited 10 to 20 years since they brought it in, because some of them — as you know, we discussed at length Proposition 13 in California. We waited years to watch the utter demise of the education and health system, the utter demise and the confusion over the protection and provision of services to the people of California. With the good history we've had in providing good service to Ontario, why would the government now change tack completely, offload its responsibility for making good, sound decisions based on bills, a process they are currently following in the House, to turn something over to a referendum process?

It is not acceptable to me, to my party, to the other opposition party, I believe, to most people who have a

good sense of what democracy is about. In my view, there is nothing more serious in terms of proposed legislation than this bill right here, and I intend to do everything I can to make all of the committee members fully aware of every implication that such legislation could bring.

I hope the Chair doesn't agree with some of your colleagues on the committee that this might be frivolous information. I do not believe it is. It is highly related to the matter at hand, there is no question about that, and I intend to find everything to bring forward, because the government members are committed to making responsible decisions. They can continue with their point of order, but I will tell you, I'm highly on topic.

Similarly, in New Zealand, international and treaty obligations should not be directly or indirectly overridden by a referendum. This is particularly related to Ontario because of the highly sophisticated nature of treaties between Ontario and nine other provinces in Canada, which has a huge impact on Canada, and the massive number of treaties that Canada has with other international countries. Are we sure that there is something in place in the legislation that would be brought forward that would not override international treaties or treaties that Ontario currently shares with other provinces?

1600

Obviously we have this issue. We wouldn't have a Ministry of Intergovernmental Affairs if there weren't such issues at hand. Have any committee members sought their advice, sought any advice at all to see how referenda would have an impact, depending on what the question was, that would actually override currently existing treaties? Those who have done this before have often said that is something you absolutely must be accountable for, that when you write legislation you ensure that safeguard is there. Currently nothing has been shown by government members that you've taken this kind of thing into account.

Any legislation that establishes a system of referenda should give government or parliament the ability to put forward a countervailing proposal to be voted upon at the same time as the initiative. That brings forward a very interesting point: What were those qualifications for passing a referendum that would make it binding? Is it going to be the two-thirds level on that proposal, if it was passed by two thirds? What if the vote was "Get rid of the Harris government" and it was passed by two thirds because people brought it forward themselves? Would the Harris government then have the ability to put forward a countering proposal?

I'll bet if you ever knew there was that kind of movement afoot among the populace of Ontario you would scramble to get a kind of counterreferendum proposal in place so you could at least allow the very select group you've been targeting continuously since your last year and a half here in government to have their say, so those few could still say: "No, we have to keep Harris. Please don't throw us out." The reality is dependent on how the legislation comes forward, how it becomes binding, what the percentage of vote required will be so it would be considered passed.

Then we have to talk about how much of the population should be voting. As you know, we may have 11 million people in Ontario, but we don't have 11 million people who vote. Let's assume that half those people are of voting age, so that leaves us 6.5 million. Let's assume that at least a million of those people, say 1.5 million, are invalids and probably don't get out to vote because they're not able to do so or they're quite senior. That brings us down to 5 million people. After 5 million, then you have that typical voter turnout of eligible voters at any given election, depending on municipal, provincial or federal level, which often might be under 50%.

If you have voter turnout that is, say, 50% of the 5 million people, now you have 2.5 million people, on average — you could probably agree with my collection of data there — who will make a decision. If the rule on this legislation is going to be 50% plus one, say it's 50.1%, you're going to have the megacity making a decision that will affect the whole of Ontario. Those people in that little dot on the map of Ontario, a square-mile area, are making a decision for one of the largest regions in the world, after maybe five or six other countries.

That's why we spoke about protection of minority rights etc. We saw much of that debate and we won't go through the kinds of debate that came forward under Bill 81 in the redistribution, but the discussion and the contra-argument to Bill 81 are exactly the same as what we're talking about here. The premise is the same, that if you don't have appropriate representation for positions, then depending on where those people are, who motivates them to come out, how they choose to come out, what types of people you get coming out, you will have one very small group having an enormous say about the rest of Ontario. Most other jurisdictions have shown that they have done that in a very inappropriate fashion.

Just a moment ago the member for Durham suggested I was suggesting that people in Ontario just aren't smart enough to understand the question. I assure the Chair that simply is not the case. The political reality as it exists in every other jurisdiction today, and in my few years on this earth I've had some opportunity to travel, the one thing that has struck me everywhere I go, is that people are the same all over the world. It doesn't matter whether you're in South Africa, Italy, Ontario or Auyuittuq, our new Baffin Island, human nature is the same, politics is the same, so regardless, you will get the same outcome many times. It has nothing to do with whether people are sophisticated or intelligent enough to understand but everything to do with what people's priority and motivation is. People will not take the time to see all the implications when they vote yes or no on a given proposal. They'll simply look at the most simplistic one because that is what's being made available to them.

I have to come back to the discussion on Constitution because there were two other very pertinent points, so I'll ensure that I do that. But just to continue, this brings me to a very specific piece of information that I know the committee will enjoy, which has to do with the politics and partisanship that gets involved in the actual vote. There is an excellent dissertation by Betty Zisk in a book entitled *Money, Media and the Grass Roots*. It gives

various examples and topics for discussion but it specifically outlines how political parties have influenced the outcome.

Before I do that, just so that there will be some continuity for our government members — I'm very concerned that the follow along — let me go back to the descriptions. If I give you some examples of propositions that have come forward in the past, we'll get a much clearer idea about what this government is going to do, how they'd put that question forward. Because of the lack of detail in legislation that we believe would be required in the use of referenda, they should have examples of what's been done historically.

1610

Let me give you an example of what some state propositions have included. There was Proposition 128, which was called Big Green: "Ban use of cancer-causing pesticides; implement a statewide plan to end use of toxic chemical gases harmful to the ozone layer; authorize sale of \$300 million in bonds to buy old-growth redwood trees; ban new offshore oil and gas production; toughen standards for clean water; create a new state environmental czar." I think we have a lot of czars in Ontario already. This was the context of Proposition 128.

Fairly complicated. Let's ask most people what "toxic chemical gases harmful to the ozone layer" means to them. Some women might say that's probably the aerosol can hair spray. Most men, I would say, probably have no idea what kind of impact a particular product might have on the ozone layer. The reality is that there's much lack of information out there and this is what they found.

It goes on: "Expand testing of foods for pesticide residue." Again I ask the people at the committee, what's a pesticide residue? I haven't got a clue. "Eliminate some industry fees for pesticide regulatory programs; require that the state dispose of illegal pesticides and appropriate \$5 million a year for pesticide research."

"What they say": "Supporters say it will protect the state from toxic chemical pollution of air, water, and land and will save billions of dollars in health care and energy costs. Opponents say it is too costly, too sweeping and too complex. They call it the 'Hayden initiative.'" That's likely the gentleman who put it forward.

Agribusiness supporters, on the other hand, who put it on the ballot to fight pesticide provisions of Big Green, say, "It's a safety policy based on science, not politics." Opponents call it "Big Brown" and say it "weakens current pesticide regulation."

Another interesting example was banning forest clear-cutting, of particular interest to those of us who live anywhere near the Temagami forest in the north: "Ban forest clear-cutting; authorize \$742 million in bonds to buy stands of old-growth redwood and retrain lumber workers who lose jobs; restrict timber harvesting on private lands; prohibit sale of timber from state-owned lands to companies milling outside the United States."

"The supporters of the bill say it will save the remaining 5% of the state's virgin redwood forest. They admit there will be an initial loss of jobs but say there will be a gain in the future because of increased forest yields. Opponents predict significant unemployment of up to 100,000 jobs lost in California."

Why is this example relevant to us? The New Democrats will well remember the issues they faced in the Temagami forest. The Conservatives certainly will remember their position only within the last year and a half on this very issue. The reality is that with the Temagami forest there is no winning, no matter what side you're on. Why is that? Because the issue is so highly complex. It deals with the economy, with the environment, it talks about jobs, about a healthy environment. There are wins on both sides of the argument, but ultimately, governments of the day must make very tough choices. When they made that tough choice, your government made the decision to continue to cut trees.

They laid out certain parameters with which they could do that, and the NDP did the same thing. They too allowed continuing cutting of the Temagami forest and they laid out whatever parameters they set apart. Had you decided to have a referendum on the issue of cutting trees in the forests of Temagami River, you likely would have — gosh, we don't know the outcome. The reality is that no one would have been happy, because the thing would have been taken away from those who were given the responsibility to do so. In fact, you don't know what the outcome would have been.

If the government and those who are expert in the field honestly felt they have some knowledge at hand to find the compromise, government members wouldn't have been able to do so because they had given the right to the people to have a binding referendum on the issue, and depending on who's funding it, that's what you would have had.

Going on now from that discussion, we have additional information on "Voting Behaviour: Confusion and Rationality on Ballot Questions." I'll have to forward information about the actual authors and titles of the book, because I see there's such interest in the committee that you'll want to read the entire text, not just hear the few phrases that I pull out.

Mr R. Gary Stewart (Peterborough): We'll go to the library and sit and read them.

Mrs Pupatello: I certainly hope the member does that.

If I might leave you with just one particular example, because I'm always interested in giving only the best information: On page 172 — it actually goes on quite at length in the whole chapter, and I don't want to bore you with details — it talks about voting behaviour on ballot propositions, and this is a book entitled "Direct Legislation" and it was written by David Magleby. It specifically talks about voting intentions. What I found most fascinating about this book was that depending on who puts it forward, what groups support it, what the demographics are of the group that tend to surround the issue, they can determine whether it will fly.

They were also able to say that depending on the initial public reaction of a proposition being put forward, they could estimate whether it would have legs and have that kind of support from the introduction of the proposition right through until the end, and it was wholly dependent on a couple of things. One most significant item that was responsible was how much money was backing the proposition.

The government members should use extreme caution when they go forward with this kind of legislation, because depending on what the issues are, you will pull out the most ferocious of fighting people with lots of money to back them up. You will spend millions of dollars, as is currently the case in the megacity discussion of Toronto. Today we already know — and this is just today; Minister Leach only introduced legislation yesterday — that the glossy has been printed and you're spending \$1.2 million on propaganda to advance your side of the proposition.

In fact, you've not even going to allow a referendum in that case, so you're being quite contradictory. Clearly this committee had no input on the whole issue of the Toronto situation, because clearly the Chair would have said: "Here we are as a committee looking to introduce legislation on referenda in Ontario, and the people of Metro Toronto want a referendum and you won't give it to them. How ridiculous." Surely you told that to the Premier. Surely the members of the committee said: "We've spent hours sitting on this committee. We've had to listen to Pupatello go on and on about the evils of referenda in Ontario and now you won't give it to the people who are asking for the referendum." Why you couldn't be consistent on this issue is beyond me, but I guess that only goes to tell us that those of you who want it, it's not even in your hands. It also speaks to the issue that the reason certain topics will be put on this agenda item, once you have referenda legislation in place — you will have no control over the topic, over the outcome, over how it plays in that machiavellian way the government tends to work these days; why you'll select the topics you will, what those outcomes will be, and how it's meant to play, just in time for the next election.

I believe my colleagues have something to say as well, so I look forward to their continued debate and I hope you also look forward to mine.

The Chair: Are there any other comments on this point?

Mr Tony Clement (Brampton South): I'd like to move that the Legislative Assembly committee's report indicate that legislation authorizing the holding of provincial referenda to be held on any topic within the jurisdiction of the Ontario Legislature be subject to the conditions and thresholds described below:

(1) Discretionary referenda may be initiated by the Legislature of Ontario.

(2) Mandatory referenda shall be initiated on issues involving the Constitution of Canada or Ontario, or involving new taxes paid by Ontario taxpayers.

(3) Citizen initiatives shall be allowed to be initiated whereby citizens may mandate a referendum to be held, within reasonable time or in conjunction with a municipal or provincial election, upon receipt by the Legislature of the signatures of not less than 10% of the citizens of Ontario, such petition having been submitted within 180 days of its initiation.

(4) There would be a prohibition against the gathering of signatures for profit by any person or company or association.

(5) Municipalities would be empowered to hold referenda or receive a citizens' petition regarding issues within its powers upon the same thresholds and terms.

(6) There would be appointed by the Legislature of Ontario an independent referenda commission, headed by a justice of the Supreme Court of Ontario, which commission would approve the final question for referendum and oversee the conducting of the referendum.

(7) The commission could also determine whether the referendum question, on its face, is in violation of the Charter of Rights and Freedoms or the Ontario Human Rights Code, in which case the referendum would not proceed.

(8) Referendum questions would ask a clear and concise question which would demand a yes or no answer, and would require a 50%-plus-one majority of voting Ontarians in order to pass. The effect of such passage would be, in the case of a simple question, to introduce for first reading a bill designed to accomplish the referendum result and, in the case of a more defined bill or proposition, introduce for second reading a bill designed to accomplish the referendum result.

(9) Where citizen petition requirements have been met, the government would have the option of introducing legislation to accomplish the intent of the petition, in which case the referendum would not proceed.

(10) Other forms of electronic, telephone or mail-in voting would be allowed upon the commission's determination that such a method was possible and desirable.

(11) Maximum campaign spending and contribution limits and advertising limits would be similar to current election legislation, provided that each recognized organization seeking to participate in the referendum shall be taken as having the same rights and constraints as a recognized political party in the province's Election Finances Act.

(12) The issues of recall and electoral reform are important issues in their own right. The committee recommends that these issues be referred back to the committee for further study and citizen input.

The Chair: That's a fairly detailed motion. Mr Clement, do you have copies of that for members of the committee so that we can have a discussion on it?

Mr Clement: I have a single written copy, Mr Chair, and I'd be happy to submit that.

The Chair: I'd like to recess the committee for at least five minutes so we can get photocopies of that.

Mr Clement: Oh, I don't think you can read it.

Mrs Papatello: Could we have it typed as well? I've seen your writing.

The Chair: I'll recess for 10 minutes. I don't think it's going to come back typed.

The committee recessed from 1619 to 1631.

The Chair: We'll start again. Mr Clement, if you could just read this again now that we have it in front of us so that everyone has a good understanding of what your motion says.

Mrs Papatello: I'd like to put on the record that the member for Brampton has the most terrible writing I've ever seen in the Legislature.

Mr Clement: Thank you. I'm just humbled by the accolades. The motion reads as follows:

I move that the Legislative Assembly committee's report indicate that legislation authorizing the holding of provincial referenda to be held on any topic within the

jurisdiction of the Ontario Legislature be subject to the conditions and thresholds described below:

(1) Discretionary referenda may be initiated by the Legislature of Ontario.

(2) Mandatory referenda —

Mrs Papatello: "Shall be"?

Mr Clement: "May be." Number 1 is "may be."

Mrs Papatello: By the Legislature —

Mr Clement: Of Ontario. Obviously it's on any topic within the jurisdiction of the Ontario Legislature, which is in the previous paragraph.

(2) Mandatory referenda shall be initiated on issues involving the Constitution of Canada or Ontario, or involving new taxes paid by Ontario taxpayers.

(3) Citizen initiatives shall be initiated, whereby citizens may mandate a referendum to be held, within a reasonable time or in conjunction with a municipal or provincial election, upon receipt by the Legislature of the signatures of not less than 10% of the citizens of Ontario, such petition having been submitted within 180 days of its initiation.

(4) There would be a prohibition against the gathering of signatures for profit by any person or company or association.

(5) Municipalities would be empowered to hold referenda or receive a citizens' petition regarding issues within their powers upon the same thresholds and terms.

(6) There would be appointed by the Legislature of Ontario an independent referenda commission, headed by a justice of the Supreme Court of Ontario, which commission would approve the final question for referendum and oversee the conducting of the referendum.

(7) The commission could also determine whether the referendum question, on its face, is in violation of the Charter of Rights and Freedoms or the Ontario Human Rights Code, in which case the referendum would not proceed.

(8) Referendum questions would ask a clear and concise question, which would demand a yes or no answer, and would require a 50%-plus-one majority of voting Ontarians in order to pass. The effect of such passage would be, in the case of a simple question, to introduce for first reading a bill designed to accomplish the referendum result and, in the case of a more defined bill or proposition, introduce for second reading a bill designed to accomplish the referendum result.

(9) Where citizen petition requirements have been met, the government would have the option of introducing legislation to accomplish the intent of the petition, in which case the referendum would not proceed.

(10) Other forms of electronic, telephone or mail-in voting would be allowed upon the commission's determination that such a method was possible and desirable.

(11) Maximum campaign spending and contribution limits and advertising limits would be similar to current election legislation, provided that each recognized organization seeking to participate in the referendum shall be taken as having the same rights and constraints as a recognized political party in the province's Election Finances Act.

(12) The issues of recall and electoral reform are important issues in their own right. The committee

recommends that these issues be referred back to the committee — that is to say the Legislative Assembly committee — for further study and citizen input.

The Chair: We now will have discussion on this motion. Mr Clement, would you care to lead off?

Mr Clement: I'll certainly defer to my colleagues as well as the debate proceeds. This is an attempt by me, on behalf of the government caucus, to put some issues on the table for further elaboration and discussion which would ultimately, I hope, lead to all-party consensus in the form of a final report.

I understand from my Liberal friends across the way that there may be some things on here that they feel they are not in a position to agree to and I'm sure we will hear from Mr Silipo on behalf of the NDP as well, but perhaps this is a way to provide a framework for our further discussions on this as a committee.

In terms of process, certainly I would be happy to see what your recommendations are. I know we have a very full agenda as a committee leading up to the next year. There may be a more appropriate way to deal with this in subcommittee or whatever the Chair feels it the most appropriate.

Let me say at the outset, though, that I believe this is a piece of the puzzle which does represent the views of the PC caucus. The working paper which this committee had charge to investigate said at the outset that this government felt the referendum technique was an appropriate mechanism to deal with certain issues, maybe not all issues, but that certain issues that are before the public can be dealt with in whole or in part with referenda.

Having said that, we feel there are two ways that issues of importance can be dealt with. There are mandatory issues — that is to say issues that are subject to mandatory referenda — which shall be dealt with by the Ontario Legislature in the form of a referendum. The issues are any issues involving the Constitution of Canada or Ontario or involving new taxes. All the rest are up to the discretion of the Legislature where they wish to put something to a referendum.

Having said that, though, there is also another mechanism, which I think is critically important to the electoral process and to the democratic process that is part and parcel of this and, quite frankly, I find this to be a more exciting topic than simply the government deciding which issue should be before the people in the form of a referendum and which should not be. What I'm speaking of are citizens' initiatives.

The importance of citizens' initiatives is that it is not the political class or the media class that is determining what is an appropriate issue for discussion or debate in the form of a referendum; it is the citizens or a certain percentage of the citizens who have signed a petition that will be able to allow this to be a part of the public discussion.

It is important, though, that it not be an insignificant portion of the electorate that gets to decide this. There has to be a threshold, and the threshold that we have put up for discussion is 10% of eligible voters, which means it has to be of a certain significance. I think we heard that from some of the presenters, that this should not be a referendum process that allows a referendum to take

place at the drop of a pin or a referendum to take place because there is a particular hot issue of the week in the Ontario Legislature. It is a referendum process that says that even if all of the political parties don't think it's an appropriate topic or even if the government of the day doesn't think it's an appropriate topic, if there is a certain minimum number of citizens in Ontario who are registered as voters who feel it is an appropriate topic and they are able to sign a petition within a period of time, and that petition represents a certain minimum percentage of the voters of Ontario, then yes, there is an opportunity for there to be a citizens' initiative referendum to take place within a reasonable time of that decision having taken place.

1640

That is a very important sea change, if you will, in terms of the way that we conduct our democracy in Ontario and it is something that is utterly consistent, may I say to my friend Ms Papatello, with the pronouncements relating to the latest announcement yesterday that there has to be some sort of framework in place. You cannot just have an anarchistic situation where there's duelling referendums or there is some form of question which becomes the topic of debate rather than the public policy issue at hand.

What we're saying is that we would like to have a framework so that everyone knows that there is a way to ensure that a referendum question is fair and open and concise, and that there is a way to ensure that this referendum issue either has the support of the Legislature of Ontario to put to the people or, alternatively, has the support of a certain minimum number of citizens. That is a very consistent and open and honest way to deal with the referendum question on behalf of the citizens of Ontario.

As I say, by allowing this process to go forward, by suggesting, as I do in my motion, a couple of caveats, we can ensure that the referendum process is not, as Ms Papatello has evinced, a process that is going to allow for results which are going to be seen as being unjust or unfair to certain members of the citizenry. For instance, we have the signature threshold for petitions. For instance, those signatures have to be accumulated within a certain period of time.

We also have in the motion a reference to an independent referendum commission, which commission would be there to mediate, to ensure that the referendum question is fair. It is not simply a matter of the government of the day —

Mrs Papatello: Appointed commission?

Mr Clement: That is correct, an appointed commission.

Mr Gilles E. Morin (Carleton East): Appointed by the government.

Mrs Papatello: Appointed by the government?

Mr Clement: By the Legislature of Ontario. There's a difference between the government and the Legislature of Ontario, as she well knows.

Mr Morin: You've got to be joking.

Mr Clement: This commission would have the ability to ensure that the questions are fair and are not pointed in one way or another.

Item 7 is also important: "The commission has the ability to determine whether the referendum question, on its face, is in violation of the Charter of Rights and Freedoms or the Ontario Human Rights Code...." This makes it very clear that it is not the intention of the government to have referendum questions which would be in violation of basic human rights in the province of Ontario. Certainly this would not be a tool that would be used to restrict minority rights, as was feared by a certain presenters and as has been raised by Ms Papatello as well.

All in all, we have the proper safeguards. We also mentioned, if I can parenthetically say, that we would try to create a system whereby there would be certain advertising campaign and spending limits, so that it would conform to what is already in place as passed by the Legislature of Ontario with respect to electoral spending limits vis-à-vis the Election Finances Act.

All of these things together meet the concerns that were presented by the presenters, who were overwhelmingly in favour of referendum legislation, but some of them did have some legitimate caveats or concerns they wished to have addressed by this committee.

I'm hopeful that my colleagues on the other side will take this as how it has been intended, namely, as a legitimate first attempt to come up with a coherent and cohesive plan for referendum reform in Ontario.

The Chair: I intend to move in rotation, allowing one speaker from each party as we continue this discussion on Mr Clement's motion, and I'll turn to the Liberal caucus.

Mr Morin: Let me just say that I think it's unfair. For me anyway; I don't know for the others. I cannot read that. With all respect, it should be typed properly and presented to us properly so we can read it. There's no way I can read that, honestly. Again, it's got to be done properly. I would suggest, Mr Chairman, that we get the right copies in front of us as soon as we can and then we'll continue with the debate afterwards.

The Chair: I must say in response, Mr Morin, that it is somewhat difficult to read. That's why I asked Mr Clement to read it a second time. I'd hoped it would have given people an opportunity to make it legible in their own minds. I hope that we could continue. I would ask all committee members in the future, if they have a complicated motion that they intend to bring to the committee, it would be helpful, although not absolutely necessary, to all committee members to have it typed up in advance.

Mr Morin: But there's no point in continuing a conversation unless I have the text in front of me and I can read it and understand what it says and make the necessary corrections. Honestly, it is totally unfair.

Mrs Papatello: It really is a mess.

Mr Morin: Why don't you adjourn for an hour and have it typed.

Mr John Gerretsen (Kingston and The Islands): Did the staff quit on you, Tony?

Mr Clement: Times are tough.

The Chair: Mr Clement, would it be possible for you to have this typed up in, say, 10 or 15 minutes, if we were to recess? If it's impossible, I guess we'll try to continue.

Mr Clement: Certainly. I will do my level best, Mr Chair.

The Chair: So you would be prepared to do it?

Mr Clement: I will undertake to do my level best.

The Chair: Can we resume then in 15 minutes? The committee is in recess.

The committee recessed from 1646 to 1705.

The Chair: We'll start again. Thank you very much, Mr Clement, for getting us this and getting it turned around so quickly. This is very helpful and we can have a much more reasonable discussion this afternoon.

Turning to the Liberal caucus, do you have any contribution you want to make to the discussion on this motion?

Mrs Papatello: Yes. Item 2: Was that "initiated" or "mitigated" in your rough copy? "Mandatory referenda shall be mitigated on issues involving constitutional" —

Mr Clement: "Initiated," Mrs Papatello. "Mitigated" doesn't make sense in the context of that sentence.

Mrs Papatello: Okay. Could you please give me an explanatory note on item 2? What was your frame of mind that resulted in item 2?

Mr Clement: I'd be happy to answer that question. I would refer Mrs Papatello to Your Ontario, Your Choice, as well as the attendant documentation that was ably prepared by Philip Kaye, which was my guide for the 12 statements you see in the motion. One of the issues that you will see there is, "On which topics should there be discretionary referenda and on which topics should there be mandatory referenda?" By discretionary referenda I believe both the Your Ontario, Your Choice document and the Kaye document, which sought to systematize some of the deputations that we heard, indicated that there were a couple of issues involved there. First of all: What are the terms of discretionary referenda? Should there be certain issues that should not be allowed to be put to referendum by the Legislature of Ontario? My motion suggests that basically any issue within the purview or jurisdiction of the Legislature of Ontario can be the subject of a discretionary referendum. That is to say, the Legislature may decide on any topic within its jurisdiction to put that question or that topic to the people of Ontario.

Item 2 then is: On which topics is it required before the Legislature acts? On which topics should they go to the people prior to such action having legal force and effect? Again, I would refer you to Your Ontario, Your Choice and the explication of Mike Harris's positions both before the election and during the election period, in which I identified two issues which he identified as the PC Party of Ontario position with respect to mandatory referenda. First, if there are any changes proposed by either the government of Canada or the government of Ontario with respect to the Constitution of Canada or the Constitution of Ontario, those have to go to the people before they are passed by the Legislature of Ontario. Second, any new taxes that would be proposed by the government of Ontario would face the same precondition.

Mrs Papatello: You haven't given the parameters for discretionary or citizen initiatives. You have given the parameters on the issues that could be involved in mandatory referenda. Are you limiting in any way the

topics for discretionary or citizen initiative types of referenda?

Mr Clement: I would say that the answer to that would be yes. There are more limits on the citizen initiatives that there are on discretionary referenda, but in each case I would refer you to item 7 which indicates that the referendum question, if it is on its face in violation of the Charter of Rights and Freedoms or the Ontario Human Rights Code, if it is found to be such by the proposed commission, would not proceed. That would be in the case of both discretionary referenda and citizen initiatives.

I would say parenthetically that you almost don't have to say that, but in order to ensure that the position of the Legislature of Ontario on this is crystal clear, I wanted to put it in there. Quite frankly, if there is a referendum question that is purporting to initiate a process whereby a bill would be passed in the Ontario Legislature which is in contradiction of the Charter of Rights and Freedoms, then obviously that is ultra vires the Ontario Legislature and —

Mrs Papatello: Therefore in your point 9, "Where citizen petitions have been met," you mean the criteria and result of the petition?

Mr Clement: That's right; that is to say, the thresholds.

Mrs Papatello: Right. The government has "the option of introducing legislation to accomplish the intent...in which case the referendum would not proceed."

Mr Clement: Correct.

Mrs Papatello: If the reverse is true, what then is your opinion? If the reverse is true, that the government has the option and chooses not to introduce legislation where citizen petitions have been met, what then is the outcome?

Mr Clement: Are you saying the submission of the petition, or the referendum result?

Mrs Papatello: If the citizens' initiative follows all the procedure and process that you lay out and they meet those guidelines and criteria, the government has the option of introducing legislation to accomplish the intent. That means they're in support of it and therefore they bring in a bill etc, and the referendum doesn't have to be held.

If the reverse is true and the citizens' initiative meets its criteria, submits the required number of signatures within the required number of days etc and the government doesn't wish to introduce a bill, you're saying the referendum would proceed. It relates to the question of the binding nature of the referendum, which is not discussed in discretionary, mandatory or citizens' initiative. What is the binding nature of any of these?

Mr Clement: I refer you to item 3, where it says, "Citizen initiatives shall be initiated," if you take that in conjunction with item 8 — let me say it this way: If there is a citizens' initiative which produces such an overwhelming majority of support within the province of Ontario that it is quite clear that there is almost no point in holding the referendum because the result would be an 80% yes or a 90% yes, then the Legislature does have the option to consider a bill without going through the

process of the referendum prior to the referendum taking place, in which case the referendum would not occur.

Mrs Papatello: True.

Mr Clement: That's item 1. Item 2 is, what if the citizens' initiative meets all of the criteria, the petition is submitted, the referendum takes place? In my view, according to what I have posed here for discussion, then if the question is a simple question — and that's where you need the sage advice of prominent Ontarians — if it's a simple question without a bill attached to it, if you will, then that is deemed to be the first reading of the bill and it is up to the Legislature to put some flesh on the bones of that people's choice. If the citizens' initiative is much more complex, so that as part of the public debate there is a fine proposition or bill that has been obviously put before the people, then you can assume it's gone to second reading, according to what I've suggested.

Mrs Papatello: Yes. What, in your view, is the status of the mandatory nature of implementation by government of the outcome of the referendum?

Mr Clement: It becomes a bill of the government, in which case the government is obliged to support it.

Mrs Papatello: Only when the government chooses to introduce the bill. When the outcome of the citizens' initiative is one which the government does not agree to and it goes forward regardless as a referendum item, then what is the intent? How binding is the outcome of the referendum? You haven't referred to the binding nature of any of these, and that's the question.

Mr Clement: I think I would demur from that because I think that I've laid out in item 3 that it "shall be initiated"; that is to say that the referendum shall take place.

Mrs Papatello: The referendum, yes, but the outcome of the referendum, is it binding on the government?

Mr Clement: I gather you were not here at some of our hearings, but there is a constitutional issue about how binding referendums can be.

Mrs Papatello: What are you recommending? That's the question.

Mr Clement: I'm recommending that it become a bill of the government. We cannot bind the Lieutenant Governor; that is to say, you cannot force the Lieutenant Governor to sign a bill. So we are taking the advice of some of the deputations that we heard, Mr Boyer among them, who have suggested that the best you can do and the way to proceed is that it become a bill of the government to which the government is attached and is responsible for.

Mrs Papatello: So is the government bound to introduce legislation, regardless of the question of the referendum, simply on the outcome of the referendum? The government must support it?

Mr Clement: If you're asking me whether the government is obliged to support through the legislative process the result that has come out of a citizens' initiative, I would say the answer is yes, absolutely. Otherwise that would be contrary to the intent.

Mrs Papatello: So why wouldn't you include in your motion today the binding nature of each of the referendum types here?

Mr Clement: Quite honestly, I thought I had, but if you seek to improve upon it, I'd welcome your improvement.

Mrs Papatello: Which number discusses the binding nature of the outcome of a referendum on government legislation to be introduced as a result of the —

Mr Clement: Item 8.

Mrs Papatello: So you're telling me, regardless of whether it's citizen- or government-invoked, a discretionary matter, whatever you want to call it, regardless of it and regardless of the outcome, if it passes as a referendum item with whatever thresholds we say there are going to be, the government is bound to introduce the legislation on it.

Mr Clement: Yes.

The Chair: Okay?

Mrs Papatello: I can wait.

The Chair: All right. Yes, we'll come back if you have more questions and comments.

Mr Tony Silipo (Dovercourt): I want to just say a couple of comments in response to this and will go on as long as you'll let me and then come back in the subsequent rounds.

Let me just say, first of all, because I spend a lot of time, and justifiably so, criticizing the government, that I appreciate having this motion in front of us. I think it sets out a series of points that we can actually discuss and decide whether we agree with them or not. Given the government's stated preference for this, it's incumbent upon them, as I've been saying all along, to come forward with something, and I'm glad that they have because it makes it easier for me to express my view and that of my caucus on this. I continue to look forward to hearing the view of the Liberal caucus on this as soon as they determine what it is, but we'll see that as it unfolds.

Let me just tell you, as I've said before, starting from the premise that I have and that our caucus has, that it is useful for referenda to be used. We don't believe it should be used every other week because we believe the parliamentary process really needs to continue to be upheld, needs to be improved. I've got a lot of interest in the very last of the recommendations in this report that I'll speak to as well, where I think a lot of improvements can be made in terms of the electoral reform and the legislative functions. I want to suggest we need to add to that as well, but I'll come to that later.

Let me just say, starting from that premise then, that we believe referenda, if used wisely and sparingly, can actually assist in the parliamentary process. I would have to say there's at least here a useful framework. There are some things that we will not support and I will not support and there are some other areas where we'll make some suggestions for changes, and we'll see how far we can get.

I think I've said before, and it bears repeating, given that we now have a specific motion in front of us, that I will not under any circumstances support mandatory referenda, so I will not support item 2 of this. I don't believe it is appropriate to say that there have to be certain issues upon which there shall be a referendum. As far as the government-initiated referendum is concerned, I think that is a political decision to be made by the

government of the day in sizing up the nature of the issues that are in front of it and determining whether you should go to the people with a referendum or not.

I would think that there are certainly some areas such as constitutional questions where it would prove to be wiser to go to the people. I, for one, if I were in the position, would continue on that one to say that's probably the best example that I've seen of cases where you should go to referendum, but even so, I wouldn't put that in the law in terms of saying that you have to. There may be a small constitutional amendment upon which there is agreement and I'm not sure that you would want to have a law that says you have to take that out to referenda when in fact there may be broad agreement.

On the other hand, if there are some major changes contemplated, my attitude as a legislator would be to say it publicly is wiser to go to the people, but that's not a good enough reason to have it mandated in legislation that there should be in those circumstances.

1720

The other part that's in that motion that I completely oppose is the provision that says you have to have a referendum when there are new taxes to be paid by Ontario taxpayers. Again, it seems to me that's a political decision that's made by the government and the government should not skate out of that responsibility by taking the referendum route. They should be clear that if they want to raise taxes, they have the right to do that and then they have the responsibility to defend that action with the population.

Having said that, I'll be interested, as we get into this, to test my colleagues across the floor on this, particularly in terms of what they really mean by "new taxes." I don't know whether we have any definitions of taxes, but I think that there have been lots of instances already in the life of this current Harris government when they have raised taxes.

Mr Gerretsen: User fees.

Mr Silipo: Yes. They call them user fees.

Mrs Papatello: Copayments.

Mr Silipo: They call them copayments. They call them lots of things. They call them tuition fees, for example, but they're new taxes that people weren't paying some time ago. So I'd be interested as we get into this discussion more to see how my colleagues across will try to delineate taxes. Property taxes are also taxes. They go up sometimes because of voluntary actions by members of municipal councils or school boards; oftentimes, as we've seen in the last year and a half, because they have had no choice, given the cuts imposed upon them by this government.

I could go on, but I just make the point that that's an area we're not able to support.

In going on, I'll just follow the order that's set out here. Item 3 deals essentially with the threshold. I've indicated before that I appreciated the government members' movement on this from the initial 5% to the 10%, which I think is a more realistic threshold. I'm subject to further refining of this.

Thinking of this, I think it's not a bad threshold to have, but there is one major piece that's missing from this and I'll just suggest this as a way to see if there is

some potential agreement on this. I think it would be useful to have as part of this threshold some sense of the 10% of citizens' signatures needing to come from different parts of the province. I think if you have a threshold as high as 10%, it's not unreasonable to also be looking at a regional breakdown, and I'm not talking about riding by riding or constituency by constituency. We'd have to look at a way of roughly defining the province in its four regions or six regions, however you wanted to do it. It's that kind of approach that I think would add to this in terms of having a sense that if we were going to proceed with a citizen-initiated referendum, it would be done on the basis of a good enough cross-section of support from all parts of the province that we would not be in a situation in which people from some of the more populated parts of the province would be seen to be dominating the agenda.

When it comes to the vote, obviously there are also some issues around what you do with that. I personally am more comfortable with that point in saying it's 50% plus one across the board, but in terms of initiating it I see the sense and I just ask my friends across to think about this in terms of putting in place some provisos that would say the 10% has to also reflect some regional breakdown.

Going down the list and just skipping a few of these, number 5 intrigues me. If I understand that correctly, what Mr Clement is saying is that he's trying to apply to the municipal level here the same kind of test and approach that we would apply to the provincial level. In other words, there would be both citizens' petitions or initiated referenda available on areas of municipal jurisdiction as well.

One of the interesting things that isn't addressed there, and obviously given the debate around the future of Metropolitan Toronto that I am particularly interested in, is what happens when you are faced with a situation like that. What I take from a strict reading of this is that municipalities would certainly be able to go ahead and hold that referendum, but the question I think it begs is, what is the responsibility of the provincial government in that instance in terms of respecting the wishes of citizens in that jurisdiction once they've expressed themselves through a referendum?

That's something it would be interesting to come back to. As we get more into this I will certainly want to come back to that with some particular amendments and suggestions on that.

In number 6 I like the notion of a separate commission to look at issues around the question to be asked. I want to reserve a little bit on whether that should be headed by a justice of the Supreme Court, but I like the notion of having someone removed in that sense look at that. I suggest again to our members opposite that you don't necessarily have to have that same body be the body that runs the referendum.

The reason I suggest that is because it seems to me we have already in place a commission, the elections commission, that is better equipped to actually do the nuts and bolts of running the referendum. I would think a government that's concerned about not furthering duplication wouldn't want to set up another commission to do

the same kinds of things the elections commission is now equipped to do.

I think you could separate out the question of running the referendum, hand that out to the elections commission — you may have to change the mandate of that, obviously, a little bit — and then leave to this referenda commission the other aspects of it around sorting out the question, sorting out whether there are questions, as in number 7, that impact on the Charter of Rights and Freedoms or the Ontario Human Rights Code, which I think are separate from the nuts and bolts of actually running the referendum.

On the issues raised in number 7, and I appreciate the effort to try to deal with the issue of minority rights and how those should be protected, I just want to reserve on this in terms of coming back with some further points because I think we need to build on this. But I think this is a useful start in terms of acknowledging that there are questions we would not want to see proceeding in a referendum where they clearly infringe upon the charter.

My concern is that other instances may not be a direct infringement of the charter that clearly would impinge on minority rights, and I think we've got to find a way to do that. I don't pretend to be able to do that here on the spot. I want to flag it as something to think about more and come back to because I think it's a major point, and depending on whether we sort that out, we may or may not agree on that point.

In number 8 I found the exchange between Mrs Papatello and Mr Clement helpful. I want to make sure I understood what number 8 is trying to do. As it is written, I don't think it does what Mr Clement wants it to do. I'm assuming the premise here is that when there is a referendum we need to have legislation, whatever the decision is. If it's a decision in order to implement a decision, there has to be legislation put in place.

What caught me on this was that I didn't understand this distinction between first reading and second reading. It sounded like all the government had to do when there was a simple question was to introduce a bill for first reading and then it could forget about it. That's not what I heard Mr Clement say. Mr Clement said earlier that there would be an obligation upon the government to carry forward that legislation and pass the legislation to implement the decision that had been arrived at through the referendum.

I see him nodding. I think that just needs to be reflected in the wording so the report would say the intent is for there to be an onus on the government to introduce legislation, see it through its various stages and actually get it passed.

1730

The other point I wanted to make is around number 11. This is a useful start in terms of acknowledging that there would have to be rules set. I think we should give some more thought to this in terms of whether we need to, because I think we probably do, but I'd want to hear more discussion on this in terms of actually setting up a yes-no committee process with some clear rules around that.

I think it would be useful here for us to look at what exists, as we have the material. I would think we need to

go in the direction of actually saying, however many forces are in favour or against the referendum question that's in front of us, whether it's initiated by the government or by a citizens' group, that there has to be a structure set in place that allows people to focus their energies and allows the public to control, through this process, the spending and other aspects of the process.

On the last one I would like to make two suggestions. The first is that this needs to also encompass the question of legislative reform or how the Legislature functions, or whatever the right words are around that, in terms of the issues to be looked at. The second is that rather than the committee simply recommending that these issues be referred back to us for further study, we don't need to ask the Legislature that they be referred back.

If we want to, as a committee, delve into these issues, and it would be my preference that we do, then I think we should indicate in our report that we intend to study these issues further. I would even suggest some time lines, that we certainly intend to study them, seek some citizen input on them and do them preferably this spring, once we're done with this report, and that we will report back to the Legislature. Again I would prefer to have a time line in there. I'm going to suggest June. If that's too early I'll be very open to listening to other suggestions from members of the committee. But I would like us to be more proactive on this and say that this is something we recognize as another major piece of work this committee should be doing and that we're ready to do it, and we'll do it as soon as we get through this particular piece of work.

Those are my suggestions and comments at this point. I hope and foresee that there is a number of areas where we can find agreement. There are some areas where we will not agree and there are other areas where arriving at some agreement will depend on the willingness of other committee members. That's where I would be at this point. I find it helpful to have this in writing in front of us and I'm assuming, and we won't finish this today, as we come back with the Legislature in January and therefore the committee sitting, that we'll have an opportunity to get into these in greater detail and see where we can go.

Mr O'Toole: I appreciate being able to comment. First I want to acknowledge the thoroughness of the work Mr Clement has done to lead this committee in some kind of constructive manner. We're all familiar with the paper that was issued by the government, Your Ontario, Your Choice, and the public hearings that were held throughout the province during the month of September. Mr Clement has deliberated and listened to this issue for a long period of time, and this committee has to some extent been derailed by Miss Pupatello, and I'm not really sure of the purpose or intent.

Being more productive, as we are today, I really appreciate the comments of and thoroughness with which Mr Silipo has deliberated on each of the 12 recommendations. I think he's made some very solid, sound observations. This gives us a very focused piece of recommendation from the government, which Mr Clement has presented for this committee, and I believe it forms in all respects a very solid basis to the work that was provided

to us by the clerk of the committee. Philip provided us each with a format for debating the referendum issue, and I think he's really coined or structured the recommendation we're dealing with from Mr Clement in response to each one of those issues, the format for discussing this referendum issue.

For the record, really, I want to establish first in my mind: Is Mrs Silipo substituted formally on this committee today?

The Chair: Mrs Silipo?

Mr O'Toole: Pardon me — Pupatello. Is Ms Pupatello substituted as a —

Mrs Pupatello: It's Mrs.

The Chair: Mr O'Toole, Mrs Pupatello is properly substituted.

Mr O'Toole: Good. Is Mr Gerretsen substituted in?

The Chair: No, he's not.

Mr O'Toole: There are three regular members of the committee, Mr Bartolucci, Mr Morin and Mr Miclash, who are not here?

The Chair: That's correct.

Mr O'Toole: And the substitutes are Ms Pupatello —

Mrs Pupatello: John, it's Mrs.

The Chair: Mr Gerretsen is not subbed in, to the best of my knowledge. Mrs Pupatello is.

Mr Gerretsen: Mr Chair, just for the record, I'm here because I'm interested in this issue. If the member has any objection —

Mr O'Toole: Good, excellent. No, I'm very pleased. I'm pleased by the consistent participation of those members and I'm glad they are ongoing members. This debate should not be diminished by frivolous participation. That's really the point I'm trying to make. In concluding, I would like to compliment Mr Clement for bringing forward a document we can focus our attention on in a more constructive manner: allowing the people of Ontario their choice.

The Chair: Mr Gerretsen, did you want to go next?

Mr Gerretsen: If it's all right with Mr O'Toole, I'd just like to make a few comments.

Mrs Pupatello: Now, don't make it frivolous, John.

Mr Gerretsen: I'm not trying to be frivolous. I don't think I've made any comments to the committee on this issue today. I'm here purely out of interest and have a number of questions I'd like to ask Mr Clement. One relates to item number 2, where he talks about "new taxes paid by Ontario taxpayers." Mr Silipo raised this issue as well, that we're not just talking about provincial taxes here, I assume, and I take it also that we're not just talking about new taxes. Are we talking about increased taxes within a particular taxation category as well?

Mr Clement: Forgive me for my inelegant phrasing. This motion was an attempt to break a bottleneck that was occurring in this committee. Some of the phraseology is inelegant and perhaps inexact, and that is no one's fault except my own, so let me just apologize in advance.

Mr Gerretsen: There's nothing to apologize for. The new taxes you're referring to, are we just talking about provincial taxes there or are we also talking about municipal taxes?

Mr Clement: I'd like to have further discussion about that, but my understanding of the pledge that government

members made in the election was that it would be provincial taxes.

Mr Gerretsen: Okay. And when you're talking about new taxes, are you talking about a new taxation category or are you also talking about an increase of existing taxes?

Mr Clement: This is the sort of thing we can settle with this discussion. I'm quite willing to get your feedback on what you think is appropriate.

Mr Gerretsen: Okay. Those are the only comments I have currently.

Mr Silipo: I don't have anything further to add at this point. I would appreciate if there were some response by Mr Clement or others on some of the suggestions I've made, or if there are things they need to think further on, that's fine too. If there are any responses, I'd appreciate hearing them. Then I could respond back if there's a need to do that.

Mr Clement: I'd be happy to respond very succinctly, at this stage of the late afternoon, to Mr Silipo's very constructive discussion of the motion that is before us. We've already had a bit of a discussion about item 2.

The geographic threshold is another issue that I think we have to talk out a bit as a committee. Certainly there are pros and cons for a geographic threshold item as part of a general threshold when it comes to citizens' initiatives. The pro of that threshold would be to ensure that a referendum question is not dictated solely by a particular region of Ontario, so that it is not being driven by a region or by two regions, much to the disapproval of other regions within the province. The con side of the argument, on the other hand, is that if there are sufficient numbers of citizens within a particular region who feel strongly about an issue, to demand double or triple or quadruple majorities in terms of thresholds before the issue gets discussed as a matter of public policy in Ontario is perhaps too demanding. A citizen is a citizen is a citizen, and if a requisite number of them meet the thresholds, those citizens should have the opportunity to have a referendum placed on a ballot or a series of ballots. But I think reasonable people can differ on that issue. There really are two sides to this issue, both of which are equally legitimate, and perhaps we can generate some light on this particular issue in the furtherance of our discussions.

1740

There was a very interesting question by Mr Silipo about the effect of municipal referendums. We might want to discuss this further as well, because certainly in my mind, as I drafted the motion, my view was that a municipal referendum would have effect upon issues that are within the jurisdiction of the municipality. That is to say, a municipality could not seek to have a referendum question on an issue that is outside of its normal jurisdiction. The further question that is begged by that, and I'm sure Mr Silipo, who is of quick mind, has already thought of this even as I speak, is what happens if there is a question that pertains to something of shared jurisdiction? That is a very good question that I think we should discuss as a committee and perhaps seek some expertise on, because one can predict already where that issue might come forward if we had this legislation drafted and

passed by the Legislature. So that is something that perhaps we can make some recommendations to the government on as a prelude to legislation.

The fourth thing I'd like to comment upon with respect to Mr Silipo, and then I have a question for the Chair, is that he has identified an area where I was fuzzy, and that was with respect to umbrella committees and whether, if we are going to have spending and contribution limits, that automatically predicates that you have to have registered umbrella committees in order to police the campaign spending and contribution limits. That is an issue which did cross my mind and which I think we should discuss further to see whether that is a necessary precondition. If it is, perhaps we should say so. If we have come to the conclusion through our discussions that it is not a necessary precondition but maybe it's a preference by one or more of the parties represented around the table, we should say so as well. It would probably be of help to the drafters of the legislation to have our thoughts on those matters. So again I would thank Mr Silipo, as always, for his commentary.

May I say one thing about item 12 on the motion? I understand, Mr Chairman, that we have a very full agenda on this committee for the early spring session of this committee and I certainly wouldn't want to tie your hands as Chair or start to dictate right now exactly what should be the order and priority of matters before the committee. Suffice it to say that I stand by my comment that recall and electoral reform are important issues that should be discussed in the fullness of time. I'm a bit uncomfortable, I will say to Mr Silipo, with strict time limits as to when those issues will be discussed, but I agree with him that they should be discussed within a reasonable period of time. I don't think we're trying to torpedo this and put it in a closet somewhere without having the opportunity of the committee to further discuss it, but my own opinion is that in order to discuss it fully, we need some citizen input as well, that it can't just be us as self-proclaimed experts opining to each other.

Mr Gerretsen: Maybe we should hold a referendum.

Mr Clement: You know, this thing just keeps catching on, I tell you?

I would recommend, as my own personal opinion, not having discussed it with my colleagues, that we would try to find some time once we have dealt with matters that I know are pressing to you, Mr Chairman — that that would be an item on our agenda once we've dealt with some of the pressing items that I know are following.

With that, I would just ask a question, having, I will confess —

Mrs Pupatello: I have one more question too.

The Chair: Go ahead, Mr Clement.

Mr Clement: I'm not cancelling debate on this, Mrs Pupatello, but there is a question on my mind and it would hopefully help further direct this committee. Not having gone through this process before — I will admit to that on Hansard — I'm just wondering whether you have an opinion as to what the best way to proceed is. Do you see us moving as a committee item by item, number by number through this? Is that the way to best proceed, or what do you recommend?

The Chair: We could. I think we've had a really good discussion this afternoon and certainly we've made considerable progress as a committee. There have been some very constructive comments made from the opposition and the government members that we might all want to reflect upon over the break, because we're getting close. I suppose in theory we could try and deal with this motion this afternoon, but I think the constructive input that has been brought forward and the constructive manner in which it has been brought forward would give us all cause to want to think about it further and reflect upon it, perhaps check with our colleagues, but to bring this back in the new year when we discuss it further. Then we could talk about going line by line to deal with the issues in your motion. That's just my observation, but I'm certainly in the hands of the committee.

Mrs Papatello: I'd like to ask Mr Clement a question. Have you written this motion in the appropriate manner to take a question such as, as a referendum question, the continuing of full funding for Catholic education? Would that as an issue fit each of the items you've laid out in your motion? Would that issue fit under each one? Could you in fact hold such a referendum in Ontario on that issue?

Mr O'Toole: If I may, through the Chair, number 7 would clearly disqualify that question, as the courts have just recently interpreted it.

Mrs Papatello: I was asking Mr Clement if the motion he wrote has taken into account that kind of issue. And in number 7, with that commission that is struck, regardless of what they deem, would such things as appeals etc be allowed prior or post?

Mr Clement: That's a fair question. I expect what would happen is that this commission would make an initial ruling as to whether the referendum question, on its face, is violating the Charter of Rights and Freedoms or the Ontario Human Rights Code. Knowing the way our society is, regardless of the ruling, probably there would be one group that would be upset or another group that would be upset and they'd probably take the matter to court, in which case I have no idea what the court would eventually decide. But it would be an interesting law school examination question.

Mrs Papatello: Do you think as the writer of the motion you need to take some more time over the course of the break to further refine any of the points you've laid out, such as the commission and terms of reference for the commission, an appeals process or some allowance for it? Do you think you need to refine any of the points so that we might review a refined motion as opposed to the one that I know you were forced to do quite hastily and you'd likely review and make some change to?

Mr Clement: I thank Mrs Papatello for the question. I would say that my preference is to refine together the sometimes inelegant wording that this motion represents. I don't claim to have perfection, so this is not a perfect motion by any stretch of the imagination. I think it would be now incumbent upon us to use this motion as a benchmark to then come up with a report. If the report is something that the parties opposite feel comfortable with, they'll sign on or sign on to parts or sign on to none, but

I don't think at this stage the search for the perfect motion is going to be helpful to the committee.

Mrs Papatello: Then might I request a change in the motion, if you'd like us to do it as a group? I'll show you why you might choose to review it and come back with something else. I propose that you completely eliminate number 2 of your agenda item.

Mr Clement: No, I would not do that. Subject to how we wish to go, Mr Chair, there might be parts or all of these items that through discussion we decide to alter, or in some cases the government members may decide to keep and the opposition members may want to eliminate, in which case, on that particular question you might wish to file a minority opinion.

The Chair: Mrs Papatello, in theory you could move that as an amendment if you chose, but my sense is we're still in a preliminary discussion stage.

1750

Mrs Papatello: Right, and that's exactly the point, Mr Clement: that should we do this, we as opposition members only have the opportunity to move a motion which will be defeated by your fellow colleagues on this committee. I am supposing that you personally would be of the opinion that we allow for addenda or clarifications, spelling out terms of reference, that would allow for certain parameters to be set in certain areas and you might do that willingly, as opposed to motions put forward by opposition members that will be denied. Would you like to review them and allow for some of that expansion?

Mr Clement: Sure.

Mr Silipo: I also had a couple of process questions and suggestions. First of all, I wanted to know, Mr Chair, if there's something I've missed. Mr Clement suggested that we have or will have other business that we'll have to deal with. Can you just refresh my memory in terms of what else is referred to us?

The Chair: I would ask Lisa, our clerk, to give you that if she has that information handy. But the one thing that came to my mind is that we are responsible, according to the standing orders, to annually review the TV service in the Legislative Assembly, and unfortunately it hasn't been done for several years. That's one issue. There are a couple of other issues, motions that have been left over from earlier, I guess, the fall session and the spring session: teleconferencing, videoconferencing.

Interjection.

The Chair: Oh, and the rings. We've been asked to look at whether or not the Legislative Assembly crest should be on a ring that members could purchase.

Mr Grimmer: That should take us about a minute.

The Chair: None the less, it's all business.

Mr Silipo: I guess the word "pressing" is a subjective term, then.

The Chair: Quite a number of things.

Mr Silipo: I thought maybe we were being delegated one of the major pieces of legislation coming forward, but I guess not.

The Chair: Certainly government business would probably take precedence over these.

Mr Silipo: Then I would just say — and I don't want to show any disrespect to those other important issues —

that the items raised in number 12 are at least as important as, and I would think more important than, any of those items you've listed.

We'll come back to that in terms of suggesting — I don't want to be unrealistic about it. I just want to be clear that there is agreement around this committee that this is an issue we want to look into and that we will look at some reasonable time lines within which to do that, as opposed to putting it off and never getting to it.

I understand, Mr Chair, that if the Legislature were to decide that we should deal with a major piece of legislation, that would take precedence, as it always does, over anything else. That's fine. I would ask people to think about that.

I would suggest in terms of process that I would concur with what you have said. This has been a useful start, and perhaps it might be helpful if Mr Clement and other members of the government side would want to reflect upon the suggestions that have been made today in response to his initial presentation here in the form of this motion and perhaps come back with something that's reworked showing where there is some further movement, if any. I think that gives us something we can go from.

I would be just as happy, quite frankly, if we were to ask staff to begin to do some of that fleshing out, but maybe we're not quite ready for that yet. I think we're not that far away from completing our report on this. There clearly are some things on which we will never agree no matter how long we discuss them, so let's just decide that we're not going to agree on those. Then we can each put whatever wording we want in there. But there are some things where if a few more meetings will help us to get some agreement, we should try to do that.

To get us to the next stage, it might not be a bad idea if we all reflect on these until the next time we meet, which will I guess not be until the middle of January. I for one expect to come back with some further suggestions and amendments. I would expect and hope that Mr Clement and others on the government side would do the same and I would hope that our Liberal colleagues would be in a position to tell us their positions on these issues by that time as well.

The Chair: It would make sense to me, from my perspective, to suggest a next step perhaps. We've got this motion and we've had good preliminary discussion, but it might be helpful to have the subcommittee meet to further refine this relative to the comments we've heard today when the House comes back in the new year. That would be my suggestion.

Mr O'Toole: I just want to ask the clerk if we could get a list of those outstanding items to be discussed by this committee. I would hope the recommendation I made some time ago with regard to reviewing the standing orders and decorum and voting and those other procedures — is that not standing up, and has that not been somewhat deliberately set aside, representing a rather unique, House leaders kind of issue? Every time it's

come up, we've really ended up adjourning or running into gridlock.

I consider that a fairly important issue. I'm patient, but I would not like to trivialize it along with the crest for the ring on agenda items. I think it could take a substantial amount of time for this committee to really deal with some of the operational guidelines or standing orders in the House. So I'd like to see some kind of list if I could, through the clerk, of those items that have been referred to this committee.

The Chair: You are quite correct, Mr O'Toole. That order and decorum issue is before the committee still on our agenda of items that remain undone.

Mr O'Toole: Is that going to come up in the next session, after Christmas?

The Chair: I don't think we've made a decision to deal with it in any specific time frame, nor have we had direction from the House leaders to deal with it more urgently, and of course the issue that's before us right now was referred by the government, so it does take priority consideration. But, Mr O'Toole, we will get you that list.

Mrs Pupatello: Just for a start for Mr Clement, since he has agreed to review this and come back with a more refined list of 12, the ones that are immediately apparent that would have to be refined would include your description of what "new taxes" are. I think you should clarify that, given that you yourself aren't sure at this point what the parameters of that might be. You should outline that. You may have all-party agreement, depending on what you choose it to be.

Another is the "not less than 10%." Clearly you recognize the requirements of regionalization in that, so you may choose to refine that now. Again, you may find you have agreement, depending on what your term is.

"Municipalities would be empowered to hold referenda," your point number 5: You should check the existing powers within municipalities now to hold referenda, and I believe that would be refined as well.

Again, your definition and terms of reference for the commission, including the ability to appeal and what that process would be.

Another that's very apparent is number 8, "in the case of a simple question." We need your definition and term of a "simple question." Again, that might refer back to what the commission decides. Regardless, your wording of that would clearly change.

I give you examples of those five that you would review, I think, and refine of your own accord.

The Chair: Thanks, Mrs Pupatello.

It's close to 6 o'clock. Since there I was, I thought, broad agreement among committee members that the subcommittee should meet next to review this again, I would say to you that the subcommittee should meet on January 15, which is the first Wednesday we're back, and that the full committee should meet the following week, on January 22. The committee is adjourned.

The committee adjourned at 1758.

CONTENTS

Wednesday 18 December 1996

Referenda M-413

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président: Mr Ted Arnott (Wellington PC)

Vice-Chair / Vice-Président: Mr John Hastings (Etobicoke-Rexdale PC)

*Mr Ted Arnott (Wellington PC)

Mr Rick Bartolucci (Sudbury L)

*Mr Dave Boushy (Sarnia PC)

*Mr Tony Clement (Brampton South / -Sud PC)

*Mr Carl Defaria (Mississauga East / -Est PC)

*Mr Bill Grimmert (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Ron Johnson (Brantford PC)

Mr Frank Miclash (Kenora L)

*Mr Gilles E. Morin (Carleton East / -Est L)

*Mr John R. O'Toole (Durham East / -Est PC)

*Mr Tony Silipo (Dovercourt ND)

*Mr R. Gary Stewart (Peterborough PC)

Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Douglas B. Ford (Etobicoke-Humber PC) for Mr Hastings

Mrs Sandra Pupatello (Windsor-Sandwich L) for Mr Bartolucci

Also taking part / Autres participants et participantes:

Mr John Gerretsen (Kingston and The Islands / Kingston et Les Îles L)

Clerk / Greffière: Ms Lisa Freedman

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service



3 1761 11467110 0